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## VOLUME I

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## APPENDIX

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD

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| In the Matter of:<br>ERIE RESISTOR CORPORATION<br>and<br>INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 613, AFL-CIO | Case No.<br>6-CA-1790 |

### Relevant Docket Entries

7.21.59 Charge filed.

7.23.59 First amended charge filed.

9.11.59 Second amended charge filed.

4. 1.60 Third amended charge filed.

4. 7.60 Complaint and notice of hearing dated.

4.12.60 Company's[1] letter requesting extension of time to file answer and request for rescheduling of hearing, dated.

4.19.60 Regional Director's order rescheduling hearing, dated.

4.19.60 Regional Director's order extending time for filing answer, dated.

4.28.60 Company's answer to the complaint, received.

1. Erie Resistor Corporation, Respondent in the proceeding before the Board and Petitioner herein.

*Relevant Docket Entries.*

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| 5. 5.60 | Regional Director's teletype rescheduling hearing, dated. |
| 5.23.60 | Hearing opened. |
| 5.26.60 | Hearing closed. |
| 7.21.60 | Company's requests for findings of fact and conclusions of law, dated. |
| 10.18.60 | Trial Examiner Hilton's Intermediate Report, dated. |
| 12.13.60 | General Counsel's exceptions to the Intermediate Report, received. |
| 12.13.60 | Union's exceptions and request to argue orally before the Board, received. |
| 12.19.60 | Errata to Union's exception, received. |
| 4. 7.61 | Notice of hearing issued. |
| 4.12.61 | Order amending Notice of Hearing, issued. |
| 5. 4.61 | Oral argument appearance sheet, dated. |
| 7.31.61 | Decision and Order issued. |
| 8. 7.61 | Order correcting Decision and Order. |

## Decision and Order

On October 18, 1960, Trial Examiner Reeves R. Hilton issued his Intermediate Report in the above-entitled proceeding, finding that Respondent had not engaged in the unfair labor practices alleged in the complaint, and recomending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel and the Charging Party, International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO, herein called the Union, filed exceptions to the Intermediate Report, together with supporting briefs. Respondent filed a brief in support of the Intermediate Report. On May 4, 1961, the Board heard oral argument in Washington, D. C., in which all parties appeared and participated.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, the oral argument, and the entire record in the case, and finds merit in the exceptions of the General Counsel and the Charging Party. Accordingly, the Board adopts the findings of the Trial Examiner only to the extent they are consistent with the decision herein.

The essential facts of the case are not in dispute. The Union, which had been certified in 1951 as representative of Respondent's production and maintenance employees, called a strike on March 31, 1959. The strike was concededly economic in its inception, the parties having been unable to come to terms on a new agreement.

All employees working in the bargaining unit, numbering approximately 478, joined the strike.

New applications for employment were received by Respondent within a week or two after the strike began. However, during April, Respondent operated the plant as best it could with 140 clerical and other non-unit employees performing production jobs. Production reached about 15 to 30 per cent of normal. Several customers cancelled their orders with Respondent.

On May 3, Respondent decided to seek replacements to run the plant, and so informed all members of the Union, by letter. Strikers were told they would have their jobs only until replaced. The first replacements were hired the week of May 11. After being accepted for employment, these replacements were told by Respondent they would not lose their jobs as a result of the strike. Similar assurances were given by Respondent's division managers in meetings with replacements inside the plant.

During this period the parties continued negotiations for a new agreement. In a bargaining session held May 11, Respondent informed the Union that it was promising replacements they would not be laid off as a result of the settlement of the strike, and advised it that in order to implement this promise, it would have to accord the replacements some form of superseniority. Respondent offered to negotiate the details of a superseniority scheme for the replacements. The Union replied that superseniority was discriminatory and illegal, and refused to consider it.

Five bargaining sessions were held between May 11 and May 28, during which Respondent proposed several alternative forms of superseniority. The Union, however, remained adamant in its opposition to superseniority, contending that all strikers would have to be reinstated and the replacements terminated. Because of certain picket line incidents which had occurred on April 2 and May 7, Respondent proposed to delete the union security clause which had been contained in the prior contract, suggesting that, because of the Union's harassment of replacements, employees should no longer be required to join the Union.

By May 25, 33 replacements were working, plus 4 former strikers.[1] On May 27, Respondent decided that enough replacements had been hired so that its proposed superseniority plan should be made more definite. A plan calling for 20 years additional seniority for employees in the unit who worked during the strike was devised by Respondent's Director of Industrial Relations, Gordon Ferrell. This plan was to apply only in the event of future layoffs, and the 20 years thereby accorded replacements and ex-strikers could not be used for purposes of vacations, bumping, and other employee benefits based on years of service with the Employer.[2]

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1. The 140 clerical and other non-unit employees continued to work at unit jobs throughout the strike, supplementing the replacements and returned strikers.

2. According to Ferrell, the figure of 20 years was developed from a projection of what Respondent's work force would be following the strike, on the basis of expected orders. Apparently, Respondent was concerned with the impact of future layoffs on the replacements. At the time of the strike, in addition to the 478 employees in the bargaining unit, there were about 450 other employees on lay-off. As of March 31, the beginning of the strike, a male employee needed 7 years seniority to avoid lay-off; a female employee needed 9 years.

On May 28, Respondent informed the Union that it had settled on the 20 year superseniority plan. However, this plan was not publicized by Respondent until June 10, and was claimed to be "confidential" until then.

At a Union meeting held May 29, the strikers unanimously resolved to continue striking "until management stops its unfair labor practice by making us agree to giving superseniority to the scabs." That weekend, May 30 and 31, the Union publicized Respondent's 20 year superseniority plan over the local television station.

As the strike progressed, the Respondent continued to receive applications from prospective replacements.[3] Over 300 applications were received which were not processed—according to one Company official, because he did not want to "break" the Union. Industrial Relations Director Ferrell testified that the Company "purposely proceeded slowly in its replacement program so as to preserve, if possible, a continuity of employment."

During the week beginning June 4, agreement was reached on several seniority provisions which had hitherto been in dispute. Superseniority, however, remained in issue, and on June 10, Respondent wrote a letter to all employees and members of the Union, making public for the first time its superseniority plan. On June 11, the Union offered to give up its union security agreement if the Company would abandon superseniority. No agreement was reached, however, and the Union stated it would continue striking until Respondent yielded on superseniority.

3. Throughout this period, the City of Erie was classified by the United States Department of Labor as an "F" area, the designation indicative of the greatest relative labor surplus (at least 12 per cent unemployed).

By June 14, 81 replacements had accepted employment, plus 23 returning strikers. On June 15, Respondent posted on the Company bulletin board its 20 year superseniority plan. In the week following June 15, 21 more replacements accepted employment, plus 64 additional strikers — a total of 102 replacements and 87 former strikers. On June 24, the Union decided it had to settle the strike, and offered to withdraw the picket line and submit the superseniority issue to the Board. The parties at that time drew up a tentative agreement with respect to the remaining economic issues. Although the Respondent informed the Union on the evening of June 24 that it was not able to accept the terms of the tentative agreement, the strike nonetheless came to an end on June 25.

The next day, Respondent gave the Union a list of 129 employees whose jobs had been filled by replacements. Thereafter, strikers who had not been replaced were recalled by Respondent in the order of seniority, with several exceptions for critical jobs. By July 5, there were 358 employees working in the bargaining unit. Respondent's work force increased to a maximum of 442 by September 20, 1959, then, for economic reasons, decreased gradually to 240 by May 1, 1960. It is conceded that a large number of employees laid off between September 1959 and May 1960 were recalled strikers whose seniority became insufficient solely because of the operation of Respondent's superseniority plan.

On July 17, 1959, the parties executed a strike settlement agreement, wherein they agreed to settle Respondent's "replacement and job assurance" policy through the Board and the federal courts. The existing

plan was to "remain in effect pending final disposition." Also on this date, the parties executed a new contract, including among other things a maintenance of membership provision.

The principal issue in this case is the legality of Respondent's superseniority plan. The complaint alleges, and the General Counsel and Charging Party contend, that Respondent's insistence on, and institution of, its 20 year superseniority plan for returning strikers and strike replacements, was in violation of Sections 8(a) (1), (3) and (5) of the Act.

The Trial Examiner dismissed the complaint. Finding that the Board's past decisions on superseniority had considered motivation as the controlling factor in determining the legality of strike superseniority, the Trial Examiner held the evidence inadequate to support a finding that Respondent had adopted its superseniority plan to discriminate against the Union. He therefore found no violation of the Act.

We do not agree with the Trial Examiner's interpretation of the Board's past decisions regarding superseniorty. The Board has never found the grant of superseniority to returning strikers or strike replacements lawful. As early as 1940, the Board indicated that an employer could not, in addition to replacing strikers, deprive strikers of their seniority for not reporting to work during a strike.[4] Similarly, in *General Electric Co.*[5] the Board found unlawful an employer's tolling of

4. *Paper, Calmenson and Co.*, 26 NLRB 553, 557. See also *Precision Castings Co.*, 48 NLRB 870.

5. 80 NLRB 510.

strikers' seniority during their strike, while not tolling the seniority of nonstrikers. The Board observed that relative seniority is one of the factors upon which individual employees' tenure of employment depends, and stated that, "except to the extent that a striker may be replaced during an economic strike, his employment relationship cannot otherwise be severed or impaired because of his strike activity."[6]

The Board has considered the legality of superseniority in four cases since *General Electric*. In *Potlatch Forests, Inc.*,[7] an employer during an economic strike proposed that replacements be given special protection when the strike was over. Thereafter, it accorded superseniority to all those who had worked during the strike, placing them above those who had remained on strike. Several strikers reinstated after the strike were laid off in conformity with this plan. The Board adopted the Trial Examiner's finding that the employer's superseniority policy was discriminatory and in violation of Section 8(a)(3) of the Act. The Ninth Circuit, in an opinion discussed hereinafter, denied enforcement of the Board's order.[8]

In the three superseniority cases which followed *Potlatch*, independent evidence of the employers' discriminatory intent appeared in the record. In the *California Date Growers Assn.*[9] and *Ballas Egg Products*[10]

6. *Id.* at 513.

7. 87 NLRB 1193.

8. *N.L.R.B. v. Potlatch Forests, Inc.*, 189 F. 2d 82.

9. 118 NLRB 246, enf'd 259 F. 2d 587 (C.A. 9).

10. 125 NLRB 342, enf'd 283 F. 2d 871 (C.A. 6).

cases, the respondents had committed other unfair labor practices while granting superseniority. In *Olin Mathieson Chemical Corp.*,[11] the employer promulgated its superseniority policy after the strike ended, thereby making it plain that its sole intention was to favor nonstrikers over strikers. In each of these cases the Board found violations of the Act without relying on its *Potlatch* decision, but in each case the Board disclaimed any intention of passing upon the rationale of the *Potlatch* case, that superseniority however motivated was an illegal discrimination against strikers. The Board's unfair labor practice findings were in all three cases sustained by the courts on appeal.[12]

The decision of the Ninth Circuit in *Potlatch, supra,* thus stands as the only decision, Board or Court, finding lawful an employer's use of superseniority.[13] In so finding, the Ninth Circuit, though recognizing that the grant of superseniority during a strike was a form of discrimination which tended to discourage union activities, concluded nonetheless that it was a legitimate corollary of an employer's right under the *Mackay Radio* decision[14] to secure permanent replacements. In *Mackay*, the Supreme Court held that an employer could lawfully hire replacements during an economic strike in order to continue his business, and need not, at the strike's end, dis-

11. 114 NLRB 486, enf'd 232 F. 2d 158 (C.A. 4), affirmed 352 U.S. 1020.

12. *Supra.*

13. Cf. *N.L.R.B. v. Lewin-Mathes Co.*, 285 F. 2d 329 (C.A 7), pet. for mod. den. January 19, 1961, in which the Seventh Circuit indicated that an employer's use of superseniority during an economic strike would be lawful, even though the Board's decision in that case had not passed on that issue, nor had the complaint alleged superseniority as a separate unfair labor practice.

14. *N.L.R.B. v. Mackay Radio & Telegraph Co.*, 304 U.S. 333.

charge these replacements in order to reinstate returning strikers. We respectfully disagree with the Ninth Circuit's aforementioned view with respect to *Mackay* and superseniority.[15] In our opinion, superseniority is a form of discrimination extending far beyond the employer's right of replacement sanctioned by *Mackay*, and is, moreover, in direct conflict with the express provisions of the Act prohibiting discrimination.

Perhaps most obvious is the distinction that permanent replacement affects only those who are, in actuality, replaced, while superseniority for replacements affects the employment tenure of all strikers, whether or not replaced. It is one thing to say that a striker is subject to replacement, and therefore loss of his job at the strike's end; quite another to say that, in addition to the threat of replacement, and regardless of the employer's success in securing a replacement for the individual striker, all strikers will at best return to their jobs with inferior seniority, thus incurring a detriment to their job security forever. Clearly, this is a discrimination in addition to the threat of replacement, and not merely a lesser form of discrimination encompassed by it.

*Mackay* permits an employer to take certain action in order to carry on his business during an economic strike. It is obvious that, in some instances, an employer may more readily secure replacements if he can offer them superseniority. But we also believe that *Mackay* contemplated a situation whereby, at the strike's end,

15. A number of law review notes have commented critically on the Ninth Circuit's *Potlatch* decision. See, e.g., 27 U. Chi. L. Rev. 368 (1960); 6 Duke B. J. 143 (1957); 42 Va. L. Rev. 836 (1956); 30 Texas L. Rev. 776 (1952); 6 Rutgers L. Rev. 470 (1952); 9 Wash. & Lee L. Rev. 115 (1952); 4 Stan. L. Rev. 151 (1951).

strikers who were not replaced could return to their jobs with no impairment of their tenure because they chose to go on strike. It is expressly provided in the Act, and not here disputed, that strikers retain their employee status during a strike.[16] *Mackay* itself holds that, as "employees," strikers may not be discriminated against in the manner of, and the terms of, their reinstatement.[17] Yet, giving 20 years or any other special seniority to strike replacements necessarily deprives unreplaced strikers of an important aspect of their pre-strike status, for seniority is by its nature relative; giving to one necessarily takes away from another. In essence, therefore, an award of superseniority to strike replacements renders one important requirement of *Mackay*—non-discriminatory and complete reinstatement of unreplaced strikers—an actual impossibility.

Further, permitting an employer to grant superseniority to all who work during a strike greatly enlarges the definition of "replacement" as envisaged by *Mackay*. Under the Supreme Court's *Mackay* decision, an employer during an economic strike is permitted to secure new employees, or employees outside the bargaining unit, to work permanently at unit jobs. But superseniority is normally offered not only to new employees—if to them at all[18] — but to the bargaining unit employees them-

16. Section 2(3) includes in the definition of employee "any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute. . . ."

17. *Supra*, at p. 345. See also *Robinson Freight Lines*, 114 NLRB 1093, 1096, enf'd 251 F. 2d 639, 642 (C.A. 6); *Indiana Desk Co.*, 56 NLRB 76, 78-79, enf'd as mod. 149 F. 2d 987 (C.A. 7).

18. In some cases, as in *Olin Mathieson Chemical Corp., supra*, superseniority was offered only to returning strikers. In none of the cases heretofore considered by the Board has superseniority been offered only to new employees.

selves, if they abandon the strike, or choose not to join it. Naturally, superseniority must be offered to the strikers on an individual basis, since extra seniority for all is real seniority for none. From this point of view, an offer of superseniority is not merely an attempt to secure new "replacements," but more accurately an offer of benefit to individual strikers to abandon the strike and return to work. In other contexts, the Board and Courts have held such an offer of benefit to individual strikers to be an independent violation of Section 8 (a) (1).[19]

The discrimination effected by superseniority lasts indefinitely. The Respondent in the present case contends that it was concerned with assuring replacements and nonstrikers of "permanence." Yet, by this, the employer admits it meant not just the right to the job of a replaced striker at the strike's end, but much more, the job plus a 20 year seniority cushion available in the event of future economic declines and layoffs.[20] We do not think the "permanence" envisaged by the Supreme Court in *Mackay* encompassed this "concern" of the employer, despite the contrary opinion of the Ninth Circuit in *Potlatch*. Whether a replacement can have the job of a

19. See, e.g., *Marlboro Electronic Parts Corp.*, 127 NLRB 122, 132; *Trinity Valley Iron and Steel Co.*, 127 NLRB 417, 424, enf'd 290 F.2d 47 (C.A. 5). See also *N.L.R.B. v. Spicwak, et al*, 179 F. 2d 695, 696-7 (C.A. 3).

20. Director of Industrial Relations Ferrell testified that "We knew because of the number of people on lay off and in light of the business which we had estimated, projected, that this was going to require some sort of seniority, additional seniority, which would give these people that job assurance which we felt we had the right to offer them, as permanent replacements. Otherwise, they wouldn't be permanent."

striker is one question, settled in *Mackay;*[21] but the effect of future economic declines and layoffs is a separate question, affecting not only replacements, but all employees alike. We are confident the Supreme Court in *Mackay* did not intend to permit preferred treatment of nonstrikers and replacements long after the strike was over.

There are two other aspects of superseniority which distinguish it from the mere right of replacement granted in *Mackay,* and which portend ill for the collective bargaining process and the right to strike, both protected by Sections 7 and 13 of the Act.

First, whereas the threat of replacement by outsiders may solidify the strikers in their collective efforts, superseniority effectively divides the strikers against themselves. All employees formerly on layoff, and younger strikers with low seniority, immediately see their chance-of-a-lifetime to gain at one stroke the security which only long years of employment could theretofore give them; employees longer in the employer's service sense the threat, and are impelled to return to work to protect their seniority. This combination of threat and promise, inherent in grants of seniority not based on actual service, could appear close to irresistible, and places strong pressure on the strikers, their mutual

21. Respondent contends, *inter alia*, that it had to offer superseniority merely to assure replacements of jobs at the strike's end, since the Union was taking the bargaining position that all replacements must be discharged at the strike's end. Respondent's argument is a *non sequitur*, for superseniority has no bearing whatever on whether the employer abides by its right under *Mackay* to retain replacements at the strike's end, or, on the other hand, accedes to the Union's legitimate bargaining request, understandably common to all striking unions, that the strikers should be recalled to their jobs.

interest overwhelmed by fear and desire, to abandon the strike.

The present case illustrates the point. At the inception of the strike, all 478 employees in the bargaining unit honored the picket line or joined in strike activities. As the strike progressed, Respondent secured a gradually increasing number of new employees as replacements, but few strikers returned to work until Respondent's offer of superseniority was publicly announced. During the weekend of May 30 and 31, the Union publicized Respondent's 20 year superseniority policy over the local television station.[22] On June 10, the plan was announced by Respondent in a letter to all employees and Union members; on June 15, Respondent posted it on the Company bulletin board. During the week ending June 7, the total number of strikers who abandoned the strike rose from 5 to 8. By June 14, the total had jumped to 23, and in the week ending June 21, it jumped over 200 per cent to 87. The number increased to 125 during the week commencing June 28.[23] At this point, the Union found it impossible to continue the strike, and decided it had to settle. The strike ended June 25.

The second point is that superseniority renders future bargaining difficult, if not impossible, for the authorized collective bargaining representative. Unlike the

22. Prior to this, the superseniority plan was considered "confidential" by Respondent, and had merely been discussed between the parties in bargaining. On May 27, Respondent told the Union it had settled on the 20 year plan.

23. In addition, 57 new employees had been hired as replacements, and 70 employees formerly on layoff had returned. Thus the number of strikers induced to abandon the strike greatly exceeded the number of new employees hired as replacements, and was also greater than the number of laid off employees induced to return to work.

right of replacement granted under *Mackay*, which ceases to be an issue once the employer decides to retain all replacements at the strike's end, superseniority is a continual irritant to the employees and to the Union. Employees are henceforth set apart into two groups: those who stayed with the Union to the end and lost their seniority, and those who returned before the end of the strike and thereby gained extra seniority. This difference is reemphasized with each subsequent layoff, for those who supported the union most faithfully are likely to be the first laid off. It is doubtful whether the Union can ever again succeed in calling, or even threatening, a strike, for those with 20 years superseniority will be fearful that this time replacements may, perhaps, be granted 40 years superseniority. Those who were lucky enough not to be replaced during the first strike will prefer to remain at work, and regain the seniority so abruptly lost during the first strike. The effective reward of nonstrikers and punishment of strikers inherent in superseniority stands as an ever-present reminder of the dangers connected with striking, and with union activities in general.

In the present case, at the end of the strike, the Union received approximately 190 withdrawal cards from former members. In the course of economic layoffs which followed, approximately 132 strikers who had not been replaced, and who had been recalled, were among the first to lose their jobs solely as a result of the superseniority plan. It is hard to conceive of continued effective collective bargaining under these circumstances.

In view of the immediate consequences to employees' tenure which follow from a grant of superseniority, we

do not believe that specific evidence of Respondent's discriminatory motivation is required to establish the alleged violations of the Act.

In the *Radio Officers' case,*[24] the Supreme Court pointed out that, in some situations, "specific evidence of intent to encourage or discourage is not an indispensable element of proof of violation of §8 (a) (3)." This is merely a corollary of the common-law rule that a person is held to intend the foreseeable consequences of his conduct, and the result is, in the words of the Supreme Court, that "proof of certain types of discrimination satisfies the intent requirement."[25]

One of the situations specifically considered by the Supreme Court in *Radio Officers'* (Gaynor) involved disparate wage treatment of employees solely on the basis of their union membership and status. The Supreme Court upheld the Second Circuit's finding that this form of discrimination was "inherently conducive to increased union membership," and, since the consequences were so plainly foreseeable, no further proof of "intent" was necessary.[26]

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24. *The Radio Officers' Union v. N.L.R.B.*, 347 U.S. 17.

25. Id. at pp. 44-45.

26. See also the Supreme Court's decision in *Republic Aviation Corp. v. N.L.R.B.*, 324 U.S. 793, 795, where the Supreme Court upheld the Board's 8(a)(1) and (3) findings with respect to the discharges of three stewards wearing union buttons, even though the discharges "were found not to be motivated by opposition to the particular union or we deduce, to unionism." And see *N.L.R.B. v. Beth E. Richards, et al.*, 265 F. 2d 855, 860 (C.A. 3), where the Court, in discussing an employer's criteria for layoffs, reiterated the rationale of *Radio Officers', supra,* and observed: "It is possible that the criterion adopted, though alone reasonable enough, may have the foreseeable result of affecting union activity, in which case the employer commits an unfair labor practice."

In our opinion, the present case is in every essential respect like *Gaynor, supra.* The right to strike is a privilege guaranteed to employees by statute, and Respondent's superseniority policy—on its face discriminatory against those who continued to strike—clearly discouraged strike activities and union membership of employees. Such was the inevitable result of a preference granted for all time to those who did not join the Unions strike activities. Where discrimination is so patent, and its consequences so inescapable and demonstrable, we do not think the General Counsel need prove that Respondent subjectively "intended" such a result.[27]

Nor do we believe that Respondent's claim of "necessity" can be a defense to the type of conduct here found unlawful. Surely every employer faced with a strike, or any other form of union activity, will be first concerned with the well-being of his business. There is, moreover, no doubt that a strike may increase the intensity of this concern, for the primary purpose of most strikes is to apply economic pressure to strengthen the union's bargaining demands.[28] But we do not believe that the effectiveness of a strike, or the difficulty an em-

27. The Supreme Court's recent decision in *Local 357, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America,* 365 U.S. 667, does not in our opinion require a different conclusion, but rather supports the conclusion here reached. In *Local 357, supra,* the Supreme Court reiterated its earlier position in *Radio Officers'* that "some conduct may by its very nature contain the implications of the required intent; the natural foreseeable consequences of certain action may warrant the inference . . ." (*Id.* at p. 675). The Court in *Local 357* refused to infer discrimination from an exclusive hiring agreement which expressly provided that there should be no such discrimination.

28. See, e.g., *American Brake Shoe Co.,* 116 NLRB 820, 831, enf. den. 244 F.2d 489 (C.A. 7).

ployer may have in securing replacements,[29] can sanction the pervasive form of preferred treatment here utilized by the Employer.[30] To excuse such conduct would greatly diminish, if not destroy, the right to strike guaranteed by the Act, and would run directly counter to the guarantees of Sections 8(a)(1) and (3) that employees shall not be discriminated against for engaging in protected concerted activities.

We find, in conclusion, that Respondent's grant of superseniority during the course of the Union's strike was in violation of Sections 8(a)(1) and (3) of the Act, and that Respondent's subsequent layoff of a large number of recalled strikers pursuant to such plan was likewise violative of these sections.[31]

As we have found, above, that superseniority was an unlawful form of discrimination, we find, in accordance

29. In view of our finding herein, that necessity is not a defense to the type of conduct engaged in by Respondent, we do not pass upon Respondent's contention that, in the circumstances of this case, it was in fact necessary to offer superseniority in order to procure strike replacements.

Also, in view of our decision herein, we do not pass upon the question of whether the Respondent had an express discriminatory intent in instituting its superseniority plan. See *California Date Growers Assn.* and *Ballas Egg Products, supra*, footnotes 9 and 10.

30. In other contexts, the Board and Courts have held that an employer's economic concern does not justify conduct otherwise violative of the Act. See, e.g., *N.L.R.B. v. Hudson Motor Car Co.*, 128 F. 2d 528, 532-33 (C.A. 6) and *N.L.R.B. v. Gluck Brewing Co.*, 144 F. 2d 847, 853-54 (C.A. 8), cited with apparent approval in *Cusano d/b/a American Shuffleboard v N.L.R.B.*, 190 F. 2d 898, 903, ftn. 7 (C.A. 3). See also *Star Publishing Co.*, 4 NLRB 498, 505, enf'd 97 F. 2d 465, 712 (C.A. 9); *Allis-Chalmers Mfg. Co. v. N.L.R.B.*, 162 F. 2d 435, 440 (C.A. 7).

31. We do not agree with Respondent's contention that the Union in its strike settlement agreement of July 17 waived all rights for these employees. The settlement agreement provided, *inter alia*: "The Company's replacement and job assurance policy to be resolved by the NLRB and the Federal Courts and to remain in effect pending final disposition." It is clear that this agreement was intended merely as an interim settle-

with the Supreme Court's decision in *Borg-Warner*,[32] that Respondent's continued insistence on this or a similar proposal, as a condition of negotiating an agreement with the Union, constituted a violation of Section 8(a)(5), as alleged in the complaint.[33]

Having found that Respondent unlawfully insisted on, and adopted, its superseniority plan during the course of the Union's strike, we find the evidence supports the General Counsel's and the Charging Party's position that Respondent's unfair labor practices prolonged the strike, thereby converting it to an unfair labor practice strike.

The strike at its inception was economic in nature, with five contractual issues outstanding. However, on

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ment pending legal determination of the employees' rights. In any event, we would not in our discretion honor a private settlement which purported to deny to employees the rights guaranteed them by the Act. Cf. *Wooster Division of Borg-Warner Corp.*, 121 NLRB 1492, 1495.

32. *N.L.R.B. v. Wooster Div. of Borg-Warner*, 356 U.S. 342. Cf. *Olin Mathieson, supra* (114 NLRB at p 488.)

33. The complaint also alleges that Respondent refused to bargain by engaging in dilatory tactics and shifting positions, by giving the Union insufficient time to consider proposals, and by failing to give the Union requested information as to the names of replaced strikers. With respect to the former allegations, we find the evidence insufficient to establish that Respondent's "change of positions" and "one-day offers" were anything other than bona fide strategic maneuvers on the part of Respondent, and we find nothing unlawful in Respondent's tactics. See, e.g. *R. J. Oil & Refining Co., Inc.*, 108 NLRB 641, 643; *Solar Aircraft Co.*, 109 NLRB 130, 133. With respect to Respondent's failure to supply the Union with the names of the replaced strikers, the record indicates that on June 26, Respondent did furnish the Union with the requested information. As Respondent has already supplied this information, and as we have found that Respondent unlawfully refused to bargain on other grounds, we do not believe any useful purpose would be served by predicating a finding of a refusal to bargain on this additional ground. See *The Jacobs Manufacturing Co.*, 94 NLRB 1214, 1226, enf'd 196 F. 2d 680 (C.A. 2).

May 11, Respondent introduced the subject of superseniority into the discussions, stating that it could sign no contract without some form of superseniority. Superseniority soon became the dominant issue in the settlement of the strike. At informal "side-bar" conferences held May 14 and 15, the parties discussed the remaining issues aside from superseniority, and agreement seemed imminent. Union negotiator Collella went so far as to tell Respondent that "if they dropped the superseniority issue, we had a complete agreement." However, Respondent at the meeting on May 18 reiterated its position that superseniority was "something that management people want and we must have." The Union would not agree to superseniority, and the parties recessed for several days.

When Respondent settled on the 20 year plan on May 28, the Union held a meeting on May 29, and unanimously resolved to continue striking "until management stops its unfair labor practice by making us agree to giving superseniority to the scabs." Similar statements were made by Union negotiators on June 11 and 23. At one point, Union representative Copeland asked, "If we are willing to tear up the entire contract and give it back to you and start from scratch, would you then be willing to move off the superseniority?" Respondent refused.

It is well settled that an economic strike is converted to an unfair labor practice strike when an employer's unfair labor practices operate to aggravate, or prolong, the strike.[34] In the present case, it is clear that by May 29, the date of the Union's resolution to continue striking

34. *Kohler Co.*, 128 NLRB No. 122, pp. 28-29; *Combined Metal Mfg. Co.*, 123 NLRB 895, 897; *J. H. Rutter-Rex Mfg. Co., Inc.*, 115 NLRB 380, 390, enf'd 245 F. 2d 594 (C.A. 5).

over superseniority, Respondent's superseniority policy had served to aggravate and prolong the strike, despite a narrowing of the parties' disagreement on other issues. We find, therefore, that the Union's strike, economic in its inception, was on May 29, converted to an unfair labor practice strike by the Respondent's unfair labor practices, found above. It follows that all strikers not replaced as of that date were, under established law, entitled to reinstatement as of the date of their unconditional abandonment of the strike.[35] We find this date to have been June 25, 1959, when the Union notified the Respondent by telegram that the strike was terminated, and that the strikers were "ready willing and able" to return to work.[36] As Respondent failed on June 25 to fulfill its obligation to reinstate the unfair labor practice strikers, we find that it thereby committed an additional violation of Sections 8(a)(1) and (3) of the Act, as alleged in the complaint.

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35. See, e.g., *N.L.R.B. v. Pecheur Lozenge Co.*, 209 F. 2d 393, 404-5 (C.A. 2), cert. den. 347 U.S. 953.

36. We find no merit in Respondent's contention that the Union's offer of June 25 was conditional. Although the Union did state that the striking employees "desire [d] reinstatement in line with their seniority as per the agreement reached with your representatives," there was some question at the time as to the exact terms of the strike settlement. Respondent answered the Union's telegram the same day with its own telegram, "welcoming" the Union's decision to "terminate" the strike. Respondent made clear its understanding that the agreement referred to in the Union's wire was simply that Respondent would furnish a list of strikers who had been replaced, and would call back to work those eligible for jobs. A return telegram from the Union did not dispute this interpretation. Thus, both parties treated the Union's telegram as an unconditional offer to return to work, and the strikers who were recalled did so return. Moreover, Respondent in a note handed to the Union on June 26 stated: "The Company received notice of your termination of the strike at 3:30 P.M., June 25th, and considers that hour as the end of the strike." (G.C. Exhibit No. 11)

*The Remedy*

Having found that the Respondent has violated the Act, we shall order that it cease and desist therefrom, and take certain affirmative action in order to effectuate the policies of the Act.

As we have found Respondent's 20 year superseniority policy to have been discriminatory and in violation of the Act, we shall order the Respondent to forthwith rescind said policy, and to restore all strikers who sought reinstatement on June 25, 1959, to the seniority they would have enjoyed absent the discriminatory policy.

We have also found that the strike, which began as an economic strike on March 31, 1959, was converted into an unfair labor practice strike on May 29, 1959, and that Respondent's refusal to reemploy the strikers on June 25, 1959, when they unconditionally applied for reinstatement, was discriminatory and violative of Sections 8(a)(1) and (3) of the Act. We shall therefore order the Respondent, insofar as it has not already done so, to offer to those employees who went on strike on March 31, 1959, and who were not replaced prior to May 29, 1959, immediate and full reinstatement to their former or substantially equivalent positions, dismissing, if necessary, any employees hired since May 29, 1959, to replace them.[37] If, after such dismissal, there are not enough positions remaining for all these employees, the available positions shall be distributed among them, without discrimination because of their union member-

37. See *N.L.R.B. v. Pecheur Lozenge Co., supra*, and cases cited therein. The exact names of the discriminatees, as to whose identity there appears to be no dispute, shall be left to the compliance stage of the proceeding.

ship, activity, or participation in the strike, following such system of seniority or other nondiscriminatory practice as heretofore has been applied in the conduct of Respondent's business. Those strikers for whom no employment is immediately available after such distribution shall be placed upon a preferential hiring list, and they shall thereafter, in acordance with such list, be offered reinstatement as positions become available, and before other persons are hired for such work. Reinstatement, as provided herein, shall be without prejudice to the employees' seniority or other rights and privileges.

We shall also order the Respondent to reimburse these employees for any loss of pay they may have suffered by reason of the Respondent's discrimination against them, by payment to each of them of a sum of money equal to the amount which he normally would have earned as wages during the periods (a) from June 25, 1959, the date of the Respondent's refusal to reinstate them upon their unconditional application, to the date of the Intermediate Report herein, and (b) from the date of this Decision and Order to the date of the Respondent's offer of reinstatement,[38] or placement on a preferential hiring list in the manner hereinabove described, less his net earnings during said periods. Such loss of pay shall be computed on the basis of separate calendar quarters, in accordance with the policy enunciated in the *Woolworth case*.[39]

We have further found that Respondent discriminated against certain strikers who were recalled, by

38. When, as here, the Board, contrary to the Trial Examiner, orders reinstatement of employees, back pay is abated from the date of the Intermediate Report to the date of the Board's Decision and Order.

39. *F. W. Woolworth Co.*, 90 NLRB 289.

laying them off solely as a result of the operation of the Respondent's 20 year superseniority plan. We shall order that Respondent offer reinstatement to all such strikers who would not otherwise have been laid off, on the basis of their restored seniority, dismissing if necessary employees hired since May 29 who were retained solely because of the operation of the 20 year superseniority plan. We shall also order that Respondent make whole all discriminatorily laid off strikers for any loss of pay they may have suffered as the result of Respondent's superseniority policy. The amount of back pay thus due shall be computed in accordance with the Board's normal back pay policies, as set forth above.

## ORDER

Upon the entire record in this case, and pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Erie Resistor Corporation, Erie, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Maintaining or giving effect to its 20 year superseniority policy, or to any other seniority or layoff policy which discriminates against any of its employees with regard to the order in which they are to be selected for layoff, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike or concerted activities, or whether they had or had not worked during a strike;

(b) Discouraging membership in International Union of Electrical Radio and Machine Workers, Local

613, AFL-CIO, or in any other labor organization of its employees, by refusing them reinstatement upon their unconditional abandonment of their unfair labor practice strike, or by laying them off solely as a result of the operation of a discriminatory superseniority policy, or otherwise discriminating against them in regard to their hire or tenure of employment or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act, as amended.

(c) Refusing to bargain collectively with the aforementioned labor organization, as exclusive bargaining representative of employees in the appropriate unit, by insisting that the Union agree to a discriminatory strike superseniority plan.

The appropriate bargaining unit is:

> All production and maintenance employees at Respondent's Erie, Pennsylvania plants, excluding clerical employees, office employees, engineering department employees, accounting department employees, sales department employees, personnel department employees, time study employees, expeditors, laboratory employees, nurses, quality control inspectors, timekeeping employees, executives, guards, professional employees and supervisors as defined in the Act.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of rights guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act.

(a) Upon request, bargain collectively with International Union of Electrical, Radio and Machine

Workers, Local 613, AFL-CIO, as the exclusive representative of all employees in the aforementioned appropriate unit;

(b) Rescind its 20 year superseniority policy, and restore all strikers who sought reinstatement on June 25, 1959, to the seniority they would have enjoyed absent the 20 year superseniority policy.

(c) Insofar as it has not already done so, offer the employees who went on strike on March 31, 1959, and who were not replaced prior to May 29, 1959, immediate and full reinstatement to their former or substantially equivalent positions, without prejudice to their seniority or other rights and privileges, or place them on a preferential hiring list, in the manner set forth in "The Remedy" section of this Decision, and make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them, in the manner set forth in "The Remedy" section of this Decision.

(d) Offer reinstatement to all recalled strikers who were laid off solely as the result of the operation of Respondent's 20 year superseniority plan, and who would not otherwise have been laid off, and make all discriminatorily laid-off strikers whole for any loss of pay they may have suffered as the result of Respondent's superseniority policy, in the manner set forth in "The Remedy" section of this Decision.

(e) Upon request, make available to the National Labor Relations Board or its agents, for examination and copying, all payroll records, social security payment records, time cards, personnel records and reports, and all other records necessary to analyze the seniority and reinstatement rights of employees and

former employees and the amounts of back pay due under the terms of this Order.

(f) Post at its plants in Erie, Pennsylvania, copies of the Notice attached hereto and marked "Appendix."[40] Copies of said notice, to be furnished by the Regional Director for the Sixth Region, shall, after being duly signed by the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director for the Sixth Region in writing, within ten (10) days from the date of this Order, what steps the Repsondent has taken to comply herewith.

IT IS FURTHER ORDERED that the complaint be, and it hereby is dismissed insofar as it alleges separate Section 8(a)(5) violations of the Act not found herein.

Dated, Washington, D. C., July 31, 1961.

Frank W. McCulloch, Chairman
Philip Ray Rodgers, Member
Boyd Leedom, Member
John H. Fanning, Member
Gerald A. Brown, Member

[SEAL] NATIONAL LABOR RELATIONS BOARD

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40. In the event that this Order is enforced by a decree of a United States Court of Appeals, there shall be substituted for the words "PURSUANT TO A DECISION AND ORDER" the words "PURSUANT TO A DECREE of the United States Court of Appeals, enforcing an Order."

## APPENDIX

### NOTICE TO ALL EMPLOYEES

### PURSUANT TO

### A DECISION AND ORDER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL NOT maintain or give effect to our 20 year superseniority policy, or to any other seniority or lay off policy which discriminates against any of our employees with regard to the order in which they are to be selected for layoff, or with regard to any other aspect of their employment relationship, on the basis of whether they had or had not engaged in strike or concerted activities, or whether they had or had not worked during a strike.

WE WILL NOT discourage membership in INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 613, AFL-CIO, or in any other labor organization of our employees, by refusing them reinstatement upon their unconditional abandonment of their unfair labor practice strike, or by laying them off solely as a result of the operation of a discriminatory superseniority policy, or otherwise discriminating against them in regard to their hire or tenure of employment or any term or condition of employment, except as authorized in Section 8(a)(3) of the Act, as amended.

WE WILL NOT refuse to bargain collectively with INTERNATIONAL UNION OF ELECTRICAL, RADIO AND

MACHINE WORKERS, LOCAL 613, AFL-CIO, as exclusive bargaining representatives of employees in the appropriate unit, by insisting that the Union agree to a discriminatory strike superseniority plan. Upon request, we will bargain collectively with the aforesaid Union.

WE WILL rescind our 20 year superseniority policy, and restore all strikers who sought reinstatement on June 25, 1959, to the seniority they would have enjoyed absent the 20 year superseniority policy.

WE WILL, insofar as we have not already done so, offer the employees who went on strike on March 31, 1959, and who were not replaced prior to May 29, 1959, immediate and full reinstatement to their former or substantially equivalent positions, dismissing, if necessary, any employees hired since May 29, 1959, to replace them. If, after such dismissal, there are not enough positions remaining for all these employees, the available positions shall be distributed among them, without discrimination because of their union membership, activity, or participation in the strike, following such system of seniority or other nondiscriminatory practice as heretofore has been applied in the conduct of our business. Those strikers for whom no employment is immediately available after such distribution, shall be placed upon a preferential hiring list, and they shall thereafter, in accordance with such list, be offered reinstatement as positions become available, and before other persons are hired for such work. Reinstate-

ment, as provided herein, shall be without prejudice to the employees' seniority or other rights and privileges.

WE WILL make our employees whole for any loss of pay they may have suffered as a result of our discriminatory refusal to rehire them on June 25, 1959.

WE WILL offer reinstatement to all recalled strikers who were laid off solely as a result of the operation of our 20 year superseniority plan, and who would not otherwise have been laid off, on the basis of their restored seniority, dismissing if necessary employees hired since May 29 who were retained solely because of the operation of the 20 year superseniority plan.

WE WILL make whole all discriminatorily laid off strikers for any loss of pay they may have suffered as the result of our superseniority policy.

ERIE RESISTOR CORPORATION
(Employer)

Dated _____ By _____
(Representative) (Title)

This notice must remain posted for 60 days from the date hereof, and must not be altered, defaced, or covered by any other material.

## Order Correcting Decision and Order

On July 31, 1961, the Board issued a Decision and Order[1] in the above-entitled proceeding in which an inadvertent error appeared.

IT IS HEREBY ORDERED that the said Decision and Order be, and it hereby is, corrected by striking from line 12 on page 11 the date "June 28" and substituting therefor the date "June 22."

IT IS FURTHER ORDERED that the said Decision and Order, as printed, shall appear as hereby corrected.

Dated Washington, D. C., August 7, 1961.

By direction of the Board:

HOWARD W. KLEEB
Acting Executive Secretary

1. 132 NLRB No. 51.

*Intermediate Report.*

UNITED STATES OF AMERICA

BEFORE THE
NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

| | |
|---|---|
| ERIE RESISTOR CORPORATION<br>and<br>INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, LOCAL 613, AFL-CIO | Case No.<br>6-CA-1790 |

*Gerard Fleischut, Esq.*, for the General Counsel.

*Reed, Smith, Shaw and McClay*, by *John G. Wayman, Esq.*, of Pittsburgh, Pa., and *Gifford, Graham, MacDonald and Illig*, by *Irving O. Murphy, Esq.*, of Erie, Pa. for the Respondent.

*David S. Davidson, Esq.*, of Washington, D. C., for the Charging Party.

Before: *Reeves R. Hilton*, Trial Examiner.

## INTERMEDIATE REPORT

### Statement of the Case

Upon a charge, as amended, filed by the International Union of Electrical, Radio and Machine Workers, Local 613, AFL-CIO, herein called the Union, the General Counsel of the National Labor Relations Board, through the Regional Director for the Sixth Region (Pittsburgh, Pennsylvania), issued a complaint dated April 7, 1960,

alleging that the Respondent or the Company has engaged in and is engaging in unfair labor practices in violation of Section 8(a)(1), (3), and (5) of the Labor-Management Relations Act, as amended. In its answer, the Respondent admits certain allegations of the complaint but denies the commission of any unfair labor practices. Pursuant to notice a hearing was held on May 23, 24, 25, and 26, 1960, at Erie, Pennsylvania, before the undersigned Trial Examiner. All parties were present and represented by counsel and were afforded opportunity to adduce evidence, to examine and cross-examine witnesses, to present oral argument and to file briefs. On July 25, all counsel filed briefs which I have fully considered.[1]

Upon the entire record and from my observation of the witnesses, I make the following:

## Findings of Fact

### I. The Company's Business

Counsel stipulated that the Company is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and maintains its principal office at Erie, Pennsylvania. The Company also has associated or subsidiary companies which operate other plants in Pennsylvania, Ohio, Mississippi, California, and Canada. The present case involves only the plant at Erie, Pennsylvania. At this plant, during times material herein, the Company was engaged in the manufacture

1. Appended to the General Counsel's brief, as Attachment A, is a motion to correct specified errors in the transcript. The corrections being appropriate and there being no objection thereto, I grant the motion. Attachment A is received in evidence as Trial Examiner's Exhibit No. 1.

and sale of electronic components, electro-mechanical assemblies, and custom molded plastics. During the 12-month period preceding the issuance of the complaint the Company shipped products valued in excess of $50,000 to places outside the State of Pennsylvania. For the purposes of this proceeding the Company agrees that it is engeged in commerce within the meaning of the Act. I so find.

## II. The labor organization involved

The Union is a labor organization within the meaning of Section 2(5) of the Act.

## III. The alleged unfair labor practices

### A. *The issue*

The principal issue is whether the granting of super-seniority, under the circumstances herein, to replacements of strikers and to strikers and/or other employees who returned to work during the strike constitutes a violation of Section 8(a)(1), (3), and (5) of the Act.

### B. *The Company's operations at the Erie plant; labor relations history*

Counsel stipulated that from about 1943 until 1951, the production and maintenance employees were represented by United Electrical, Radio and Machine Workers of America, CIO, (UE), but since the latter date, and following proceedings before the Board, the employees in that category have been represented by the Union. The Company has had successive collective bargaining agreements covering these employees with the UE and

the Union, the last agreement with the Union running from April 1, 1957, through March 31, 1959. The agreement contained a union-security clause and a provision for the check-off of union dues.

There is no dispute concerning the appropriateness of the unit alleged in the complaint, namely, all production and maintenance employees, with the usual statutory exclusions and other classifications of employees. I find the unit to be appropriate for the purposes of collective bargaining. I further find, on the basis of the record herein, that the Union represented a majority of the employees in the unit at all times material herein.

The parties stipulated as follows concerning the operations at the Erie plant:

The Company maintained and operated three divisions at the plant; (1) the Electronics Division, which manufactured electronic components, located in the North and South plants, (2) the Electronics-Mechanical Division, which produced electro-mechanical assemblies, located in the East plant, and (3) the Plastics Division, which produced custom molded plastics, situated in the West plant.

As of March 31, 1959, the Company employed a total of 636 employees in its Electronics Division, 345 of whom were employed in the bargaining unit; in the Electro-Mechanical Division approximately 13 of the 51 employees were in the bargaining unit, while in the Plastics Division some 120 out of about 200 employees were in the bargaining unit. In addition, the Company had about 450 employees in the unit on layoff status, approximately 400 of whom had no reasonable expectation of being recalled.

The parties further stipulated that as of March 31, 1959, under the terms of the union agreement, a male employee needed about 7 years' seniority to hold one of the jobs available, while a female employee required about 9 years' seniority.

As appears below, the Union went on strike at midnight, March 31, 1959, which continued until June 25, 1959, when it was terminated.

The parties also stipulated that the Electro-Mechanical Division, or the East plant, never reopened after the strike and the building is now used by another company. The Plastics Division, or West plant, operated until December 28, 1959, when all operations were discontinued. The Company no longer manufactures custom-molded plastics, but to the extent that such business is still conducted, such operations have been consolidated in a plant operated by a subsidiary company in Ohio. The closing of these divisions and the removal of the plastics operation are not alleged as unfair labor practices and are not issues in the case.

*C. The negotiations between the Union and the Company, the strike*

By letter dated January 26, 1959, Edward F. Bordonaro, president of the Union, notified the company of the Union's desire to enter into negotiations for a new agreement. On January 30, Gordon D. Ferrell, director of industrial relations, acknowledged the above letter and advised the Union of the Company's intention to change or terminate the agreement upon its expiration date of March 31, 1959.

The parties stipulated that between February 10 and March 31, negotiating committees of the Union and

the Company, headed by Bordonaro and Ferrell, respectively, held 22 meetings during which they discussed proposals and counterproposals and while they reached agreement on many terms they were unable to conclude a final agreement. As of the latter date the parties had failed to agree upon the Union's demands for a general wage increase, limitation upon the Company's right to subcontract work, freezing seniority for quality control inspectors, vacations, and the payment of group insurance.

Having failed to reach an agreement the Union went on strike upon the expiration of its existing agreement, midnight March 31. The General Counsel concedes the strike was an economic one, but that on and after May 11, it was prolonged by the Company's unfair labor practices which converted the same to an unfair labor practice strike.

*The Events during the Strike*

Raymond Bertone, administrative specialist under Ferrell, and Lewis J. Shioleno, general manager of the Electronics Division, both of whom were members of the negotiating committee, testified concerning the Company's operations during the strike.

Plainly, all the employees in the bargaining unit responded to the strike call for Bertone and Shioleno stated that during the first month of the strike the Company attempted to continue operations by using clerks, engineers, and other employees who were outside the bargaining unit. Shioleno related the Company had a number of orders on hand for electronic components and due to domestic and foreign competition decided it was

necessary to operate the Electronics Division plants. Similarly, George Schau, general manager of the Plastics Division, testified that plastic products were manufactured to customer specification so it was essential to try to maintain production in this department. During April, Shioleno stated production in Electronics was about 30 percent of prestrike levels, while Schau said production in Plastics was only 15 to 20 percent of normal production. As production was inadequate to meet customer demands, Shioleno stated that around the end of April the Company decided to obtain replacements for the striking employees.

On May 3, the Company sent a letter to each of the striking employees stating that commencing May 7, the Company was going to obtain replacements and the striker would retain his job until such time as he was replaced, but not thereafter. The local newspaper carried a news article on May 4, quoting from the letter and saying that strikers who failed to report for work by May 7, faced loss of their jobs.

According to a job summary of employees working on production during the strike, produced by Bertone, and prepared from personnel and payroll records, the Company for the workweek commencing May 4, had 140 employees working on production and maintenance jobs, all of whom were clerks or other workers outside the bargaining unit.[2] As of that date no replacements had been hired nor had any of the strikers returned to work.

2. The initial column of the summary, Respondent's Exhibit No. 12, is captioned "Week Ending," and under this column appears 5-4-59, and successive weeks to 6-22-59. Bertone testified the heading is erroneous and should read for the week beginning May 4, 1959. He further stated that employment figures in other columns cover the entire workweek for the stated period.

On May 6, Bordonaro addressed a letter to striking employees who had crossed the picket line warning them of penalties that could be imposed by the Union for working in a struck plant or acting as strikebreakers.

Meantime, between April 8 and May 6, the Union and the Company held eight bargaining sessions.

On May 7 and 8, the plant closed down because of mass picketing. As a result thereof the Company discharged five employees for alleged violence in connection with the picketing. The discharge became an issue in the bargaining negotiations, as well as the basis for unfair labor practice charges, but the matter was finally resolved by the parties.

According to the records produced by Bertone, the Company, for the week commencing May 11, hired 1 new employee as a permanent replacement, 23 employees on layoff status reported for work as replacements and 1 striker returned to work.

On May 11, Ferrell advised the Union at a meeting of the bargaining committees that the Company had given assurance to persons hired on returning to work during the strike they would not be laid off upon settlement of the strike, and in order to effectuate its assurances to these persons, the Company had to give them some kind of superseniority, otherwise their jobs would not be permanent. The Union took the position that superseniority was discriminatory and illegal and wanted no part of any such plan.

The Company proceeded with its hiring program and as of the week beginning May 25, it had 8 newly hired employees, 39 employees who had been on layoff

status and 5 returning strikers. Ferrell, Bertone, and Schioleno testified the replacements, at the time they were hired and thereafter, were given assurance they would not be laid off or discharged when the strike was settled.

As the Company was not securing many replacements under its program, the officials, around May 25, decided upon a plan under which 20 years' seniority, for the purpose of layoff and recall, would be added to the service of anyone returning to work during the strike. Ferrell stated the plan was reduced to writing on May 27, and entitled, "Replacement Policy and Procedure." In brief, the plan detailed procedures for reemployment of striking employees, laid-off employees and new hires and added 20 years' seniority to the regular seniority of all such persons for layoff and recall.

On May 28, Ferrell stated the plan was explained to the Union, although he was not certain whether the Union was presented with a written copy thereof. Bordonaro said the Company outlined the plan and gave the Union a written proposal of superseniority in general terms. The Union asked for a list of the names of striking employees who had been replaced but the Company refused to furnish this information on the basis of the Board's decision in *Oklahoma Rending Company.* (75 NLRB 112)

While the Company did not publicize the plan, nor inform the production workers thereof, the Union about May 30, publicized the plan in a television broadcast.

According to the stipulation of the parties, 12 meetings were held between May 11 and June 5. At each of

these meetings, as well as subsequent meetings, Bordonaro stated the subject of superseniority was discussed, with the Company taking the position that it must have some form of superseniority and the Union opposing any such provision or plan.

On June 10, the president of the Company sent a letter to all the employees, who were working or on layoff status as of March 31, in which he reviewed acts of violence on the picket line and stated that the Company was instituting a 20-year seniority policy for persons returning to work during the strike.

On June 14, the Company placed a prominent advertisement in the newspaper entitled, "A Report to the Community on the Erie Resistor Strike." In the course of this lengthy report the Company stated it had assured employees returning to work during the strike that they would not be fired or penalized by the Union and that their jobs would not end with the settlement of the strike. The Company also stated that the "Union now asks that the Company withdraw any measure of additional job security for the employees." The ad concluded with the Company saying that for the reasons stated it could not agree to continuation of the union-shop clause, but offered the Union a maintenance-of-membership provision.

On June 15, the Company posted copies of its Replacement Policy and Procedure of May 27, on the plant bulletin boards, with a supplement that the policy was in effect, unless the Union agreed to a substitute plan providing for 20 years' seniority. After the notice was posted the employees were informed that the policy was in effect.

The Company continued its replacement program and as of the work-week commencing June 22, it had a total of 57 newly hired employees, 70 laid-off employees and 125 returning strikers, plus the 140 clerical and other employees. In addition thereto the Company hired 58 temporary employees whose employment was to terminate upon settlement of the strike.

At the meeting of June 24, the Union, as stated by Bordonaro and Angelo Colella, international representative, submitted a proposal that the strike be terminated on the basis, (1) that the "replacement problem" be resolved by the Board or final disposition by the Federal Courts, (2) the Company to furnish the Union with necessary data on job openings and replacements, (3) strikers who have been replaced to be considered as laid-off employees, (4) that a moratorium be declared on the granting of additional seniority to anyone returning to work while the proposal was being considered, (5) provision for the resolution of the discharges, and (6) the Union agreed to a maintenance-of-membership provision. Colella said that Ferrell agreed to give an answer by June 26. He further stated that following the meeting the Union withdrew the picket line at the plant and publicized its action in the newspapers and on the radio and television stations.

On June 25, the Union sent a telegram to the Company stating it had terminated the strike as of 5:30 p.m., June 24, and that all striking employees desired reinstatement in line with their seniority as per the agreement reached with the Company.

The same day the Company replied by telegram advising the Union that the only agreement reached was

that the Company would furnish a list of strikers who had been replaced and a list of discontinued jobs. The Company also stated it would call back strikers still eligible for jobs in an orderly fashion as promptly as business warranted.

The Union answered this telegram with another telegram, sent the same day, wherein it requested an early meeting to resolve the one issue between the parties and urged that all the conditions, wages, and hours agreed to would remain in effect.

On June 26, the Company submitted its written reply rejecting the Union's proposed settlement agreement. The Company also presented the Union with a list of strikers who had been replaced, the list being subject to correction. Later, on July 6, the Company gave the Union a corrected list of strikers who had been replaced.

Thereafter, between July 7 and 17, the bargaining committees met on three or four occasions and on the latter date the parties executed a new basic contract and a strike settlement agreement. The basic contract contains a maintenance of membership clause while the strike settlement provides the Company's replacement and job assurance policy is to be resloved by the Board and the Federal Courts and is to remain in effect pending final disposition.

*The Hiring of Replacements; the Reinstatement of Striking Employees*

After the Company's announcement that it was going to resume operations and start hiring replacements, as expressed in the above-mentioned letter of May 3, Ferrell instructed Bertone to set up procedures for hir-

ing replacements. As the program was given wide publicity the personnel office received many inquiries concerning employment, in fact the Company received some job applications shortly after the strike started, and applicants were instructed to come to the office where they filled out the standard job application form and were interviewed by Bertone or his associates. The Company did not lower its hiring standards and still required female applicants to be high school graduates, while male applicants had to have some kind of work experience. Bertone stated that when applicants were accepted as permanent employees they were told they would not be laid off or discharged by reason of the settlement of the strike. Bertone knew of the 20-year seniority policy on May 27, and followed the procedure outlined in that statement of policy.

As already stated, the Company, for the workweek of June 22, had hired as permanent replacements, 57 new employees, 70 employees who had been in layoff status, and 125 returning strikers. In addition the Company between June 8 and June 22 hired 58 temporary employees, college students, all of whom were discharged about 1 week after the strike was called off. On June 26, as stated above, Bertone furnished the Union with a list of replaced strikers, which list was later corrected.

Bertone said that when the strike terminated the Company had about 300 applications for employment which were not considered or processed. Ferrell confirmed statements contained in an affidavit given to a Board agent to the effect that the Company had 300 applications on hand and, if it so desired, the Company could have broken the strike and replaced all the strik-

ing employees. Continuing, he stated that since there were some 10,000 unemployed persons in the labor area, there would have been no difficulty in finding sufficient employees, but the Company proceeded slowly in its replacement program in order to preserve, if possible, a continuity of employment. Colella also testified, and his testimony was not contradicted, that at the bargaining session on June 5, Shioleno declared the Company had 300 applications and that the Company was ready to replace the strikers but he stopped the plan because he did not want to break the Union.

On one occasion, June 17, the Company placed an advertisement in the newspaper for female employees. The ad stated women were wanted "for steady work," gave the general job qualifications, and that applicants should call the office for interview.

The General Counsel also produced four official publications by the United States Department of Labor, entitled, "Area Labor Market Trends," which were received in evidence. These publications disclose that before and throughout the strike the city of Erie was classified as an "F" chronic surplus area, that is, job seekers were substantially in excess of job openings.

Bertone testified that following the termination of the strike the Company recalled the striking employees who had not been replaced and whose jobs had not been eliminated. The strikers were recalled in the order of their seniority, except for the first 2 weeks when the Company reinstated certain experienced workers it needed for specialized products. Bertone confirmed the fact that all persons who came to work during the strike, excluding the temporary works and clerical and other

workers, were given 20 years' seniority for layoff and recall. He added superseniority could not be used for the purpose of job "bumping."

Bertone produced a summary of company records showing the total number of employees in the bargaining unit, on a weekly basis, following the settlement of the strike. For the workweek commencing June 29, the Company had 358 employees, which number gradually increased so that by the week of September 21, there were 442 employees in the unit. Thereafter, the number steadily decreased and for the week of April 25, 1960, there were but 240 employees in the unit. Ferrell admitted that the application of the superseniority policy resulted in the layoff of many employees, the reinstated strikers, who otherwise would have been retained. The General Counsel does not contend the reduction-in-force was discriminatory, but that the Company's utilization of superseniority in selecting employees for layoff was discriminatory and violative of the Act.

*The Withdrawals from the Union*

Shioleno testified that on June 30, he called a meeting of the employees to inform them the Union had agreed to a maintenance-of-membership clause and it was up to them whether they wished to become or remain members of the Union, or refrain from becoming or remaining union members. In this connection Shioleno exhibited and explained three cards to the employees; one card, of pink color, was a form of resignation from the Union and revocation of the union dues' check-off, a white card, which was an application for membership in the Union and a green card, an authorization for

check-off of union dues. Shioleno advised the employees the cards would be available at the foreman's desk. Bordonaro testified the Union received about 173 pink or withdrawal cards between July 1 and 17, and some 17 similar cards subsequent thereto. I mention the foregoing as part of the chronology of the case. Under the circumstances I find nothing unlawful in the Company's actions.

*D. The applicable decisions*

The General Counsel contends that the Company's adoption of the 20-year seniority, under the circumstances found above, was, and is, unlawful on the theory, (1) that such action was illegal *per se*, and (2) that the policy was motivated by unlawful considerations.

The Company asserts there is no authority to support the *per se* theory and that the evidence shows that the policy was announced and adopted for legitimate economic reasons.

There is no dispute the Company had the right to permanently replace the strikers since the strike was an economic one. Speaking of this right the Supreme Court, in *N. L. R. B. v. Mackay Radio & Telegraph Co.*, (304 U. S. 333, 345-346), plainly stated:

> . . . an employer, guilty of no act denounced by the statute, has [not] lost the right to protect and continue his business by supplying places left vacant by strikers. And he is not bound to discharge those hired to fill the places of strikers, upon election of the latter to resume their employment, in order to create places for them. The assurance by [the employer] to those who accepted employment during

the strike that if they so desired their places might be permanent was not an unfair labor practice nor was it such to reinstate only so many of the strikers as there were vacant places to be filled.

Here the controversy centers on the announcement and adoption of the 20-year seniority policy granted to striking employees, laid-off employees, and new hires who crossed the picket line. The Board and the Courts, in several cases, have passed upon the legality of a policy which accords a form of superseniority to nonstrikers or strike replacements as against strikers.

The issue was first presented in *Potlatch Forests, Inc.*, 87 NLRB 1193 (1949). There the Union called an economic strike on August 7, 1947, after an impasse in negotiations, which resulted in a shutdown of the Respondent's operations. A few weeks later strikers began crossing the picket line, new employees were hired as replacements and by October 10, the Respondent had some 1,750 employees out of a normal complement of 2,600 workers. The parties met on several occasions between October 7 and 10, and one of the subjects discussed related to procedures to be followed in getting the strikers back to work and how replacements and returned strikers were to be protected in the jobs they were holding at the termination of the strike. On October 12, the parties reached a strike settlement agreement which included a provision that all former employees would return to work without discrimination on October 13, and no later than October 22, in order to protect their job rights. Shortly after the execution of this agreement, company officials determined upon and drafted a "Return-to-Work Policy," which they claimed was to provide

a guide for uniform interpretation and application of the strike settlement agreement. The pertinent portion of the policy provided for the division of employees, for purposes of determining seniority upon a reduction-in-force, into two classes, one composed of those who had crossed the Union's picket line during the strike; the other made up of employees who remained out on strike during its entire course. This form of superseniority was later referred to by the Respondent as "strike seniority." The "Return-to-Work Policy" was drafted without consulting the Union and after it was drafted it neither submitted it to any union official, nor was it printed or otherwise generally publicized among the employees. In fact employees became aware of "strike seniority" only wher they as individuals inquired about their own seniority status. Although officials of the Union did not see a copy of the policy until June 1949, the Union was aware that the Respondent was maintaining a policy of preferential treatment to employees who had worked during the strike.

The Respondent's principal defense was that the Union agreed to "strike seniority" as part of the settlement agreement. This defense was rejected and the Board held that a seniority policy which classified employees on the basis of whether they had or had not worked during a strike, to the detriment of the latter group, was discriminatory and violative of Section 8(a)(1) and (3) of the Act.

In denying enforcement of the Board's order, *N. L. R. B. v. Potlatch Forests, Inc.*, (189 F. 2d 82, 86 (C. A. 9)), the Court held that the evidence was insufficient to establish that the true purpose motivating the

Respondent's adoption of the "strike seniority" policy was a desire to penalize those members of the Union who had most persistently asserted the Union's demands. The Court stressed the fact that the Company had advocated "strike seniority" before the strike was settled and adopted that policy at the time of the settlement of the dispute. The Court concluded that "the 'discrimination' between replacements and strikers is not an unfair labor practice despite a tendency to discourage union activities, because the benefit conferred upon the replacements is a benefit reasonably appropriate for the employer to confer in attempting 'to protect and continue his business by supplying places left vacant by the strikers.'" The Court further stated that the record did not disclose that the Respondent in fact had assured the replacements that "their places might be permanent," but that such assurance need not be proved.

The issue next arose in *Olin Mathieson Chemical Corporation*, 114 NLRB 486 (1955). Following the termination of a strike, and after all the strikers had been put back to work, the Respondent, for the first time, decided to separate its employees into two seniority groups for layoff purposes, depending on whether or not they had returned to work before the end of the strike. The Respondent did not contend that, as an economic measure to get employees to work during the strike, it had promised them superseniority. There is no indication that Respondent hired or attempted to hire replacements. In an ensuing economic layoff the Respondent in effect dismissed the complainants because they remained on strike, while retaining an equal number of other employees with less seniority because they returned to

work. It was stipulated the complainants would not have been laid off except for the superseniority policy. In finding a violation of the Act, the Board held that "the Respondent's change of seniority policy and its consequent dismissal of the complainants were in fact motivated, not by any legitimate economic interest of its own, but by a desire to punish the complainants for exercising the right guaranteed in Section 7 to engage in concerted activities, and a wish to reward the other employees for abandoning or not participating in the strike." The Board was of the unanimous opinion that the *Potlatch* decision was distinguishable on its facts.

The Circuit Court of Appeals for the Fourth Circuit fully sustained the Board's findings and conclusions in *Olin Mathieson Chemical Corporation v. N. L. R. B.*, 232 F. 2d 158. (Affirmed without opinion, 325 U. S. 1020). The Court also pointed out that the case differed factually from the *Potlatch* case in that the "strike seniority" in *Potlatch* was advocated before the strike was settled and adopted at the time of the settlement thereof. Moreover, there was an absence of unlawful motivation on the part of *Potlatch*. However, the Court disagreed with a portion of the *Potlatch* opinion wherein the Ninth Circuit held that assurance to replacements that their jobs would be permanent need not be proved. On this point the Fourth Circuit stated:

> With a strike in progress, the primary concern of the employer is to keep his plant in operation. It is then proper for an employer, who might be unable to procure replacements save upon a promise of permanent tenure, to promise such tenure to the replacements.

The question was determined the third time in *California Date Growers Association,* 118 NLRB 246 (1957). Here the Respondent instituted a seniority policy under which seniority of striking employees was reduced below that of nonstrikers and replacements. Although the Respondent claimed this action was necessary for economic reasons the superseniority policy was not announced until the Respondent published its hiring list, more than 3 months after the strike ended. The timing of this action, the Board said distinguished the case from the *Potlatch* case, and the Board reaffirmed its views as expressed in the *Olin Mathieson* decision. Continuing, the Board found that the Respondent in adopting the superseniority policy, at a time when it was engaging in other unfair labor practices, was motivated by a desire to discriminate against the striking employees rather than for economic reasons. The Board further found that while the Respondent may have generally told the replacements they would be "maintained" after the strike, the replacements were not informed of any new seniority policy until publication of the hiring list. Moreover, one of the Respondent's officials admitted that no mention was made about loss of seniority to strikers who were offered reinstatement after the strike because the Respondent did not want to "agitate the situation." The Board concluded by stating that while the Respondent had the right to permanently replace the strikers, "This is not to say, however, that the Respondent after the strike was over could go further than that and reduce the seniority of returning strikers, who had not been replaced, to punish them because they engaged in protected concerted activity." In these circumstances the

Respondent violated Section 8(a) (1) and (3) of the Act.

The Board's order was enforced by the Ninth Circuit Court of Appeals in *N. L. R. B. v. California Date Growers Association*, 259 F. 2d 587. The Court stated that the decisions in the *Mackay Radio* and *Potlatch* cases indicate the Respondent's adoption of the seniority policy did not constitute, *per se*, an unfair labor practice and that such action in particular situations may be perfectly permissible within the Act. Nevertheless, "the motive of the employer in carrying out these actions becomes the controlling factor," citing the *Olin Mathieson* decision. The Court pointed out that the facts make the instant case clearly distinguishable from the *Potlatch* case, in that in *Potlatch* "the employer made its position as to 'superseniority' and protection of employment tenure for nonstrikers, clear and open *before* the termination of the strike," whereas in the instant case the employees were not informed of the change of seniority "until long after the settlement of the strike." The Court held there was substantial evidence to support the Board's finding that the Respondent's adoption of the superseniority policy was motivated by a desire to punish the strikers.

The most recent decision dealing with this issue is *Ballas Egg Products, Inc.*, 125 NLRB No. 45, 45 LRRM 1100, decided November 25, 1959. In this case the Union, in the summer of 1957, engaged in a campaign to organize the Respondent's employees. During this drive the Respondent interrogated its employees concerning their union activities, threatened to shut down the plant if the employees selected the Union as their bargaining agent,

encouraged the formation of a labor organization of its own choosing, and transferred an employee because of activities on behalf of the Union. In a complaint proceeding the Board found that this conduct interfered with the rights guaranteed the employees under the Act in violation of Section 8 (a) (1) thereof. (121 NLRB 873)

On July 3, 1957, the Union called a strike. Some 83 employees joined the strike while about 75 remained at work. On July 5, the Respondent assembled the nonstrikers in the plant and informed them that they would be given preference in retention in future layoffs over new hires and strikers who might later return to work. While the Respondent believed this policy would keep the plant in operation, it made no mention of this belief to the nonstrikers when the policy was announced.

The strike terminated July 19, without any replacements being hired or sought during the period of the strike. With the end of the dispute the strikers requested reinstatement. Due to the seasonal decline in business, the Respondent had only 14 job openings, so it reinstated 14 strikers and placed the remaining strikers on a preferential hiring list. The strikers were not informed of the new superseniority policy. With the start of the busy season, around January 1958, the Respondent recalled 19 additional former strikers. In July the Respondent found it necessary to lay off 12 employees and in August it laid off 2 more employees. In line with its new seniority policy the Respondent selected 14 strikers for layoff. This was the first time that the strikers were aware of this policy. The parties stipulated that if the Respondent's former seniority policy had been utilized

in this layoff, 11 of the 14 former strikers would have retained their jobs.

The Board found that the Respondent's motivation in adopting, maintaining, and utilizing its superseniority policy was impelled by antiunion considerations rather than any economic interest of its own, and the case is controlled by the Board and Court decisions in *California Date Growers* and *Olin Mathieson*. The Board noted that, as in the *California Date Growers* case, the Respondent's discriminatory motive was evidenced by unfair labor practices which occurred immediately prior to the announcement of its superseniority policy. And, as in the *Olin Mathieson* case, the illegality of the Respondent's motivation stems from the fact that it neither hired nor sought replacements during the strike and there is no probative record evidence that the adoption and announcement was necessary to entice strikers to remain at work. Accordingly, the superseniority violated Section 8(a)(1) and (3) of the Act. The Board stated it was unnecessary to, and did not, pass upon the Trial Examiner's further finding that the Respondent's conduct was unlawful under the Board's holding in the *Potlatch* case (which finding is cited at length in the General Counsel's brief), because the facts are different from those in the *Potlatch* case.

*Analysis and Concluding Findings*

I have no difficulty in concluding that the alleged violation may not be sustained on the *per se theory*. Granting, as argued by the General Counsel, that the *Potlatch* case was decided on that basis and that it has not been specifically overruled, subsequent decisions by the Board distinguish *Potlatch* and make it clear that

motive is the controlling factor in determining the legality of an employer's institution of a superseniority policy or plan.[3]

The remaining issue, therefore, is whether the evidence supports the General Counsel's alternate theory that illegal motivation prompted the Company's announcement and establishment of the 20-year seniority policy.

As detailed above, the Company made no effort to hire replacements during the first month of the strike but attempted to maintain operations at the plant with employees outside the bargaining unit. As this force was unable to meet production demands the Company, on May 3, wrote the strikers that it was going to obtain replacements commencing May 7. The Union countered with a letter to some of the strikers warning them of penalties that could be imposed against strikebreakers. While Bordonaro asserted the letter was sent to strikers who had crossed the picket line, no strikers had returned to work as of that date.

The Company was unable to secure any replacements on May 7, in fact the plant was closed down on May 7 and 8 because of mass picketing.

On May 11, Ferrell advised the Union the Company had assured employees hired or returning to work during the strike that their jobs would be permanent and the Company had to give them some type of superseniority. The Union summarily rejected any such plan. The Company proceeded with its hiring program and advised replacements their jobs would be permanent.

3. See also, *Twenty-Second Annual Report of the Board*, pp. 71-72.

Since the Company was not securing a sufficient number of replacements its officials on May 25, decided upon the 20-year superseniority policy and notified the Union of the policy on May 28. Although the Company did not publicize the policy the Union did so in a television broadcast. Bordonaro also admitted the subject of superseniority was discussed at some 12 bargaining sessions between May 11 and June 5, as well as meetings subsequent thereto.

On June 10, the Company sent a letter to all employees who were working or on layoff status as of March 31, informing them of the 20-year seniority policy.

On June 14, the Company placed an ad in the newspaper that replacements would not lose their jobs upon settlement of the strike.

On June 15, the Company posted copies of its Replacement Policy and Procedure and informed the employees the policy was in effect. Thereafter the Company continued to hire replacements.

On June 25, the Union notified the Company it had terminated the strike.

On July 17, the parties executed a new basic contract and a strike settlement agreement, the latter providing that the legality of the superseniority policy shall be determined by the Board and the Courts.

In my opinion the facts in this case, tested with the criteria set forth in the applicable decisions, are wholly inadequate to support a finding that the Company adopted the superseniority policy for proscribed purposes. Here the Company has a record of contractual

relationships with the Union and its predecessor for many years and the present controversy is bottomed exclusively on the superseniority policy. Unlike the facts found in the *Olin Mathieson*, *California Date Growers* and *Ballas Egg* cases, the Company announced and adopted its superseniority during the course of the strike, not subsequent to the settlement thereof. Again, unlike the circumstances present in *California Date Growers* and *Ballas Egg*, there is no contention, much less evidence, that the Company was engaging in, or had engaged in, any other unfair labor practices at or about the time it announced and adopted the superseniority policy. The facts also differ from those in *Olin Mathieson* and *Ballas Egg*, in that the Company sought and hired replacements during the strike, whereas the employers in those cases neither hired nor sought replacements during the strike. Thus, in the instant case there is a complete absence of the factors which the Board has relied upon as evidence of illegal employer motivation in the announcement and adoption of a superseniority policy. Nor do I find any other factors upon which a finding of illegal motivation might be predicated.

The General Counsel concedes that an employer may "induce" prospective replacements to work during an economic strike by the granting of additional seniority, if this is necessary to secure their services for the continuation of his business. In this case, he argues that the Company has failed to prove it was necessary to grant superseniority in order to obtain replacements. While the General Counsel has carefully screened the record for evidence to support his necessity argument, he relies principally upon the fact that the Company had 300 unprocessed job applications when the strike ended,

certain statements by Ferrell and Shioleno and the failure of the Company to communicate its superseniority policy to prospective replacements before they were hired.

It is true the Company did have 300 unprocessed applications at the termination of the strike. I am also satisfied that at the baragining session of June 5, Shioleno declared, in the course of a heated argument, that the Company could have replaced the strikers but he prevented it because he did not want to break the Union. Likewise, Ferrell admitted the strike could have been broken, but the Company "proceeded slowly in its replacement program so as to preserve, if possible, a continuity of employment." There is no doubt that the question of whether it was necessary to grant superseniority in order to obtain permanent replacements is an element to be considered in determining the employer's motive for his action. Actually, the only evidence tending to support the General Counsel's position is the fact that the Company had 300 job applications, which he characterizes as, "The crushing blow to Respondent's case." At first glance this fact might appear impressive, but when considered in the context of the Company's course of action it loses its importance and is wholly insufficient to warrant a finding of unlawful motivation on the part of the Company. Further, the Company's employment records refute the idea that it was able to secure replacements without some form of superseniority. A summary of these records shows the following hirings, exclusive of temporary replacements:

| *Week Commencing* | *Permanent Replacements New Employees* | *Laid Off Employees Permanent Replacements* | *Returning Strikers* |
|---|---|---|---|
| May 11, 1959 | 1 | 23 | 1 |
| May 18, | 1 | 32 | 4 |
| May 25, | 8 | 39 | 5 |
| June 1, | 18 | 39 | 8 |
| June 8, | 34 | 47 | 23 |
| June 15, | 43 | 59 | 87 |
| June 22, | 57 | 70 | 125 |

Thus, in my opinion, the employment records fully sustain the Company's position that the replacement program was ineffective until the Company announced its superseniority policy for replacements.

Nor do I see how the statements of Shioleno and Ferrell warrant the conclusion or inference that the adoption of the superseniority policy was prompted by antiunion considerations. On the contrary, these expressions make it clear that the policy was promulgated for economic reasons, not for illegal or discriminatory purposes.

The General Counsel asserts the Company made no effort to communicate its superseniority policy to prospective replacements or unemployed workers and that the assurance was given to replacements after they were hired, not while they were still prospective replacements, which shows there was no need to grant superseniority. The manner in which the policy was announced and publicized by the Company, as well as the Union, is set forth above, and I believe it is reasonable to infer that the

public and persons interested in employment were aware of the policy. The General Counsel's attempt to draw some distinction between hired replacements and prospective replacements is a fine one and without substance. The undisputed evidence shows that when replacements were hired they were assured their jobs would not cease with the termination of the current strike, and such assurance is sufficient under the applicable decisions. At the same time, the General Counsel contends that the Company's communication of its superseniority directly to the Union, the laid-off employees, and the strikers proves that the Company was seeking to induce the strikers to abandon the strike, therefore, its motive "must have been to punish employees who continued to exercise their rights under the Act." Certainly, the Company had the right to propose a superseniority plan to the Union as a subject for bargaining, albeit the subject was a hard and difficult one from the Union's standpoint. As might be expected, the parties were unable to reach agreement on superseniority, although it was discussed at practically every bargaining session held subsequent to May 11. Insofar as presenting the plan directly to the strikers and laid-off employees the Company did nothing more than send a letter to the strikers, on May 3, stating it intended to hire replacements and later, following an impasse in the negotiations, the Company, on June 10, addressed a letter to the strikers and the laid-off employees advising them of the 20-year seniority policy. Since there was nothing unlawful in the Company's course of conduct, I find it may not serve as a basis for inferring that the Company established the policy to punish the strikers, as urged by the General Counsel.

The General Counsel advances other points and arguments, such as the Company's insistence upon and uni-

lateral adoption of the superseniority policy, as additional violations of Section 8(a)(5). He admits these so-called violations stem from the basic issue and are not essential to a finding that the superseniority policy is violative of the Act under the *Potlach* case. While I have considered these points and arguments, I do not deem it necessary to discuss them.

In summary, the issue here calls for the balancing of somewhat conflicting rights of the employees to engage in an economic strike and that of the employer to maintain and operate his business. Thus, the Supreme Court recognized in *Mackay* that the Employer's legitimate interest in continuing operation of his plant was a right to be balanced against the broad statutory protection granted economic strikers. In other words, an employer is not required to underwrite an economic strike by shutting down while it is in progress and reinstating the strikers after it is over, but is entitled to kep his plant running if he can and find men to do the work of the strikers. If he could hire men only for the duration of the strike, subject to displacement on the return of the strikers, he obviously would have little or no chance of hiring anyone. Accordingly, the balance between the employee's risk of losing his job by striking and the employer's risk of losing his business through an inevitable shutdown has been struck in favor of the employer. As I view it, the Ninth Circuit in *Potlach* extended the principle of *Mackay* and held that replacements could be given superseniority, provided there was no discriminatory motivation, but merely an intent to operate the business involved. Subsequent decisions of the Board and the Courts, *Olin Mathieson, California Date Growers,* and *Ballas Egg,* hold that the motive of the employer is the

controlling factor in determining whether the policy or plan was for legitimate economic reasons or to punish or retaliate against the strikers for their participation in protected union activities. From the evidence and findings herein, I am convinced, and find, that the 20-year seniority policy of the Company was announced and adopted for legitimate economic reasons.

In view of this finding, it follows that the strike which was economic in its inception was not thereafter converted into an unfair labor practice strike and the subsequent layoff of strikers, who would have been retained except for the utilization of the superseniority policy, was not discriminatory.

Upon the basis of the foregoing findings of fact and upon the entire record, I make the following:

## CONCLUSIONS OF LAW

1. The operations of the Respondent occur in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has not engaged in unfair labor practices as alleged in the complaint within the meaning of Section 8(a)(1), (3), and (5) of the Act.

## RECOMMENDATION

Upon the basis of the foregoing findings of fact and conclusions of law, I recommend that the complaint be dismissed.

Dated at Washington, D. C.

REEVES R. HILTON
Trial Examiner

*Appearances.*

**Excerpts From the Transcript of Testimony**

BEFORE

THE NATIONAL LABOR RELATIONS BOARD

SIXTH REGION

| | |
|---|---|
| In the Matter of: ERIE RESISTOR CORPORATION, and INTERNATIONAL UNION OF ELECTRICAL, RADIO AND MACHINE WORKERS, Local 613, AFL-CIO. | Case No. 6-CA-1790 |

United States Court House
Erie, Pennsylvania
Monday, May 23, 1960

Pursuant to notice, the above entitled matter came on for hearing at 10:00 o'clock, a. m.

Before: *Mr. Reeves R. Hilton,* Trial Examiner.

APPEARANCES:

*Mr. Gerard Fleischut,* 2107 Clark Building, Pittsburgh, Pennsylvania, appearing as counsel for the general counsel.

*Mr. John G. Wayman, Reed, Smith, Shaw* and *McClay,* 747 Union Trust Building, Pittsburgh, Pennsylvania, appearing on behalf of Erie Resistor Corporation, the Respondent.

*Mr. Irving O. Murphy, Gifford, Graham, MacDonald and Illig,* 615 Masonic Building, Erie, Pennsylvania, appearing on behalf of Erie Resistor Corporation, the Respondent.

*Offers of Counsel.*

*Mr. David S. Davidson*, 1126 Sixteenth Street, N. W. Washington 6, D. C., appearing on behalf of International Union of Electrical Radio, and Machine Workers, Local 613, AFL-CIO, the Union.

* * * * * * *

[5] *Mr. Fleischut*: Before the hearing opened the parties had explored the possibility of certain stipulations, and I would like to go off the record at this time to confirm those stipulations or explore them further.

*Trial Examiner*: Before you do that would you mind putting in the formal papers, and while you are doing that I can be looking over the formal papers.

*Mr. Fleischut*: Yes, sir. I wish to offer into evidence the original and duplicate of the formal documents marked General Counsel's Exhibits 1 (a) through (r) General Counsel's Exhibit 1(r) is an index and description in detail of the exhibits (a) through (r), and they have been inspected by the parties.

(Thereupon, the documents above referred to were marked General Counsel's Exhibits Nos. 1(a) through 1(r) for identification.)

[6] *Trial Examiner*: Is there any objection, Mr. Wayman?

*Mr. Wayman*: I have this objection. I believe from my examination of the files there is an additional paper. At least one of these charges was withdrawn, and I am a little puzzled exactly which charge the complaint was based upon, but I feel sure one of the charges was withdrawn, and I think that paper should be included in order to avoid confusion as to which charge is the basis of the complaint.

*Trial Examiner*: Would you want to reserve the right to raise that question, and receive the documents in evidence now, reserving that?

*Mr. Wayman*: I think that would be well.

*Trial Examiner*: I think that protects your rights.

*Mr. Wayman*: Surely, as long as that is protected.

*Trial Examiner*: Is that satisfactory to you, Mr. Fleischut?

*Mr. Fleischut*: Yes, and may we go off the record?

*Trial Examiner*: Wait until I receive them in evidence. General Counsel's 1(a) through 1(r) may be received in evidence and so marked.

(The documents heretofore marked General Counsel's Exhibits Nos. 1(a) through 1(r) for identification were received in evidence.)

*Trial Examiner*: Does counsel want to confer at this time?

*Mr. Wayman*: If you please, sir.

[7] *Trial Examiner*: All right, we will take a break, then, and go off the record.

(Discussion off the record.)

*Trial Examiner*: All right, the hearing will be in order.

*Mr. Fleischut*: During the off-the-record period the parties arrived at certain stipulations which will be read into the record by Mr. Wayman.

*Trial Examiner*: All right, go ahead, Mr. Wayman.

*Mr. Wayman*: This is a stipulation that Mr. Fleischut and I agreed upon during our off-the-record conversation, and I will read it into the record so that all can hear it.

Erie Resistor Corporation, hereinafter called the "Company", is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Its principal office is located in Erie, Pennsylvania.

The Company has associated or subsidiary companies which operate plants in Pennsylvania, Ohio, Mississippi and Canada, but the Company itself maintains and operates manufacturing facilities in Erie, Pennsylvania, where, at the times material to this case, it had three operating divisions, known as the Erie Electro-Mechanical Division, the Erie Electronics Division and the Erie Plastics Division. There are two other plants of the Company, one in Hawthorne, California, and one in State College, Pennsylvania, which are not in any way concerned in this case.

[8] The Company, during the times material to this case, was engaged in the manufacture and sale of electronic components, electro-mechanical assemblies and custom molded plastics at its Erie facilities. During the twelve-month period preceding the date of the complaint, the Company at the Erie, Pennsylvania plants above mentions, shipped products of a value in excess of fifty thousand dollars directly to points outside Pennsylvania.

For purposes of this case it is stipulated that the Company is engaged in interstate commerce within the meaning of the National Labor Relations Act, as amended.

*Offers of Counsel.*

During the times material to this case, the following general description of the plants and operations are applicable:

The Electronics Division was located in two buildings on West 12th Street in Erie, Pennsylvania. One building was commonly called the "South Plant", and was located on the south side of the street, being number 645 West 12th Street.

The other plant of the Electronics Division, commonly called the "North Plant" or the "Main Plant", was located on the north side of the street directly opposite the South plant, and was number 644 West 12th Street.

Both plants of the Electronics Division manufactured electronic components. On March 31, 1959 there was a total of approximately six hundred thirty-six in the Electronics Division on the active payrolls. Of this number, approximately [9] three hundred forty-five were in the bargaining unit represented by IUE-AFL-CIO, and its Local 613.

The Electro-Mechanical Division, commonly called the "East Plant", was located at 530 West 12th Street. That plant produced electro-mechanical assemblies. On March 31, 1959, there were approximately fifty-one in the Electro-Mechanical Division on the active payrolls. Of this number, about thirteen were bargaining-unit employees.

The Plastics Division, commonly called the "West Plant", was located at 1345 West 12th Street. It produced custom molded plastics. On March 31, 1959, there was a total of about two hundred in the Plastics Division, of

which about one hundred twenty were bargaining-unit employees.

In addition to those on the active payrolls, the Company, on March 31, 1959, had on layoff approximately four hundred and fifty bargaining-unit employees. These laid-off employees had been on layoff for substantial periods of time due to a decline in the Company's business and operations in these plants, and, according to the best estimates the Company was able to make on the basis of the business on the books and forecast, the great majority—probably four hundred out of the four hundred fifty—had no reasonable expectation that they would be recalled.

As of March 31, 1959, and under the Union agreement that expired at midnight that day, an employee needed approximately [10] nine years' seniority for a female employee and seven years' seniority for a male employee in order to hold one of the jobs then available.

The Electro-Mechanical Division, or East Plant, never reopened after the strike. The electro-mechanical operation had been steadily declining prior to the strike, and the company concluded that it was no longer economically feasible to engage in the manufacture of these products in Erie.

*Trial Examiner*: Let me interrupt. What plant was it that did not reopen?

*Mr. Wayman*: The electro-mechanical division, the East plant.

*Trial Examiner*: All right, go ahead.

*Mr. Wayman*: The Building itself is now occupied by another company, and is used to manufacture another product not similar to electro-mechanical assemblies.

The Plastics Division, or West plant, operated until December 28, 1959, when all operations there were discontinued. The Company no longer manufactures custom-molded plastics, but to the extent that this business is still conducted, the plastic manufacturing operations have been consolidated in a plant operated by a subsidiary company in Andover, Ohio, which has been devoted exclusively to molding and finishing of plastic products for many years.

The closing of the electro-mechanical plant and the [11] removal of the plastics operation to Andover are not alleged by General Counsel to be violative of the Act, and are not in issue in this case.

From about 1943 to 1951, the production and maintenance workers at the Erie plants of the Company were represented by the United Electrical, Radio and Machine Workers of America, commonly called "U.E.", then affiliated with the CIO.

In 1950 the International Association of Machinists, I.A.M., and in 1951 the International Union of Electrical, Radio and Machine Workers—then C.I.O., now AFL-CIO —commonly called "I.U.E.", petitioned for representation. The Board issued a decision and direction of election on or about May 17, 1951, in Case No. 6-RC-744 and Case No. 6-RM-62. The first election was inconclusive, the voting being—of twelve hundred and eighteen eligible —three hundred forty-nine for IAM, four hundred forty-six for IUE, one hundred twenty-four for UE, twenty-one

for no union, and thirteen challenged. In a run-off election, on or about June 28, 1951, between IAM and IUE, the vote was four hundred thirty-one for IAM and four hundred eighty-five for IUE. On August 2, 1951 the Board certified the IUE as representative of the employees in a unit described in the direction of election as follows: And I quote:

> "All production and maintenance employees at Respondent's Erie, Pennsylvania plants, excluding clerical employees, office employees, engineering department [12] employees, accounting department employees, sales department employees, personnel department employees, time study employees, expeditors, laboratory employees, nurses, quality control inspectors, timekeeping employees, executives, guards, professional employees and supervisors as defined in the Act."

By mutual agreement since the certification, by contract usage, the certified unit is described as follows:

> "Included: All production and maintenance Employees.
>
> "Excluded: Supervisory employees, clerical employees, office employees, engineering department employees, accounting department employees, sales department employees, personnel department employees, time study employees, expeditors, plant protection employees, laboratory employees, nurses, quality control inspectors, timekeeping employees and executives."

No matrons have been employed for several years. Matrons have been dropped from the description of ex-

clusions. In all other respects the unit described by contract is substantially the same as that certified.

The appropriate unit, as alleged in Paragrph 5 of the Complaint, describes the bargained-for unit, with the statutory exclusions listed in the traditional fashion at the conclusion of the unit description.

The Company and the UE had been accustomed to enter into [13] written collective bargaining agreements during the years the UE represented the employees. After the IUE was certified, the Company and the IUE negotiated a new contract dated November 14, 1951, which expired November 15, 1952. Contracts were entered into in the succeeding years, the last contract prior to the events with which this case is concerned being effective April 1, 1957 and continuing in effect through March 31, 1959.

On January 26, 1959 Edward F. Bordonaro, President of Local 613, for that local and on behalf of the International IUE, sent Mr. Gordon D. Ferrell, Director of Industrial Relations of the Company, a letter informing the Company that in accordance with the provisions of Section 66 of the contract, the Unions desired to enter into negotiations with respect to matters, both economic and non-economic, which it would present in the negotiations. The letter also suggested that the initial meeting take place February 4, 1959.

On January 30, 1959, Mr. Ferrell sent a letter to Mr. Bordonaro informing him of the desire of the Company to change, modify or terminate the agreement upon its expiration date of March 31, 1959, and stating the Com-

pany would arrange to meet with the Union at reasonable and mutually agreeable times to negotiate a new contract.

On February 2, 1959, Mr. Ferrell sent Mr. Bordonaro a letter replying to the Union's letter of January 26th, and [14] suggesting a meeting at 9:00 a.m. on Tuesday, February 10, 1959, in the personnel conference room, where such meetings were customarily held, to begin negotiations.

The first meeting was held on February 10, 1959.

This is the stipulation to which Mr. Fleischut and I have agreed, and Mr. Davidson for the Union.

*Trial Examiner*: All right, then, the stipulation may be received in evidence.

*Mr. Wayman*: If I may, I will hand the reporter this copy from which I have been reading, so he may be able to follow some of my words that may not have been entirely distinct.

*Trial Examiner*: I think they were distinct, but they came at me so fast I don't know how many I have got.

*Mr. Wayman*: Now, in addition to this stipulation, we have developed a list of the meetings, showing, as nearly as we are able, the date on which the meeting was held, the hours as nearly as we can come, and the names or identities of the persons present at the meetings.

We should like, with the Trial Examiner's permission, to mark this perhaps as Joint Exhibit or a Company exhibit and submit it in evidence simply for the purpose of making it easier to refer to these various dates and

times and persons. It is subject, of course, to correction —if any correction there need be—by the testimony of the witnesses, but it is a con- [15] venient way of following the meetings.

*Trial Examiner*: Is there any objection to that?

*Mr. Fleischut*: No, but I would just like to add this, however. The stipulation covers some fifty-two meetings, and there have been various differences as to hours. I don't recall if there are any as to dates or not, and it is to be understood the purpose of the stipulation is to provide the witnesses with a ready reference to these many dates and hours, and is subject to their corrections, as their recollection may dictate.

*Trial Examiner*: You don't question the dates on which the metings were held, but there might be some question as to the hours?

*Mr. Wayman*: Or maybe as to the persons present, but I think, except as corrected, we might say this represents the best recollection of everybody as to when the meetings were held.

*Mr. Fleischut*: It is a joint effort.

*Trial Examiner*: You want to offer this as a company exhibit?

*Mr. Fleischut*: You want to offer it as a Joint exhibit?

*Trial Examiner*: A joint exhibit, or can you give it a General Counsel's number or a Respondent's exhibit number.

*Mr. Fleischut*: Let us give it a General Counsel's Exhibit Number.

*Offers of Counsel.*

[16] *Trial Examiner*: All right. It may be marked as General Counsel's Exhibit 2.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 2 for identification.)

*Trial Examiner*: And it may be received in evidence and marked General Counsel's Exhibit 2.

(The document heretofore marked General Counsel's Exhibit No. 2 for identification was received in evidence.)

*Mr. Wayman*: If the Trial Examiner please, in connection with this exhibit, we have worked it over so many times we have only one copy, and I ask leave to withdraw it at lunch time and have copies made.

*Trial Examiner*: Very well, you may do that.

*Mr. Fleischut*: It will be General Counsel's Exhibit 2.

*Trial Examiner*: That's right. Does that conclude the stipulation?

*Mr. Fleischut*: Yes.

*Mr. Wayman*: Yes, sir.

*Trial Examiner*: Are there any preliminary matters you wish to bring up at this time?

*Mr. Fleischut*: Yes, I would like to make some minor amendments in the Complaint. The first matter which I wish to bring to the attention of the Trial Examiner is that attached [17] to the Complaint is a long list of names referred to as Attachment "A".

Now, there are some additions and corrections to be made to this list. These additions and corrections will be developed in the course of the testimony.

I might add at this point—and I will in my opening statement develop it more fully—attachment "A" does not represent to be a list of all discriminated employees or 8(a) (3)s. It was intended to be a list of replaced employees. However, as it stands, it is in error, so as the case develops it will become apparent there are some corrections on this list, and also that thre are other 8(a) (3)s.

The second matter, I refer to Paragraph 4 of the Complaint: "From on or about March 1st to on or about June 24, 1959, employees of the Respondent employed at its Erie facilities engaged in a strike".

The printing is in error there. The strike commenced on March 31st and should be so corrected.

*Trial Examiner*: I think that is pointed out in the Answer, isn't it?

*Mr. Wayman*: Yes.

*Mr. Fleischut*: Yes, that's right. The next matter is in Paragraph 8 of the Complaint. It is alleged there is an unfair labor practice and refusal to bargain commencing May 1, 1959, and that should be April 1, 1959. [18] In Paragraph 6, the third line, "has been", inserted there sh( l be "at all times appropriate thereto and is now".

I move the Complaint be so amended in this regard.

*Trial Examiner*: Any objection, Mr. Wayman?

*Offers of Counsel.*

*Mr. Wayman*: I think perhaps the General Counsel —I suppose any party at the close of the testimony could move to correct his pleadings to conform to the testimony that is developed. I have no objection to any of these changes with the exception of the change in Paragraph 8, which does take me a little by surprise, the reason being I had understood the General Counsel's position was this was an economic strike at its inception but at some subsequent time it changed to an unfair labor practice strike. I want to think about that one a little bit to see if I'm surprised enough to do anything about it, but that does come as sort of a mild surprise.

*Trial Examiner*: I will grant the motion to amend paragraph 4 and paragraph 6 in the language stated, and your Answer may be amended to include a denial or clarify your position in respect to those two paragraphs as amended, and I will withhold any ruling on the amendment to Paragraph 8 until you consider it.

*Mr. Waymans* I'd like to consider that a little further because that does change the substance.

Before we begin the testimony perhaps I should clear up [19] this matter of the withdrawn charge by reading a letter addressed to Erie Resistor Corporation by Mr. Shore. It evidently concerns the Charge in Case Number 6-CA-1751, and the letter is Dated August 25, 1959, and reads as follows: "Gentlemen: This is to advise you that Charge filed in 6-CA-1751 has, with my approval, been withdrawn. However, please note that the entire charge in case 6-CA-1790, which also includes the same allegations as those set forth in 6-CA-1751 remains pending. Very truly yours, Henry Shore, Regional Director."

I think perhaps that clears up one point that is not clear to me.

*Trial Examiner*: Very well, the record may so show.

*Mr. Fleischut*: And will the record indicate the formal documents are admitted and not subject to any objection?

*Mr. Wayman*: I have no objection to the admission of these documents, with this explanation.

*Trial Examiner*: All right, the record will so show.

*Mr. Fleischut*: I believe it is appropriate at this time to offer an opening statement in which I will endeavor to frame the issues, and I shall do this by reference to the Complaint and the Pleadings.

Paragraph 4 of the Complaint alleges a strike, and, as amended, the Complaint and Respondent's Answer I believe are identical in admitting that such a strike occurred, with [20] the exception the General Counsel alleges on or about June 24th the strike ended, in 1959, and the Respondent makes reference to the date of June 25th, so I find no issue with regard to the allegations in Paragraph 4 of the Complaint.

Paragraph 5 of the Complaint alleges a unit appropriate for bargaining, and we here embark upon the four traditional paragraphs of the 8(a)(5) violation, and although the unit, as alleged as appropriate, is not directly admitted in the responsive pleadings. I submit that the stipulation clarifies this issue. We had a certified unit which is still used by the parties, but, as the stipulation indicates, matrons have been deleted, by contract usage, from the exclusions because there are no longer any matrons, and, secondly, the parties have

rearranged the words in the not-traditional fashion of the Board. However, the stipulation indicates the unit is the same and the unit bargained for is that alleged in the Complaint here, with the statutory exclusions, "guards, professional employees and supervisors as defined in the Act." So there apparently is no issue as to the appropriateness of the unit.

Now, Paragraph 6 alleges a majority designation, and Paragraph 7 alleges a demand for bargaining. The demand for bargaining is not in issue because of the stipupation which refers to-its closing paragraphs—the exchange of letters on January 26th and January 30th of 1959, where there is a demand [21] for bargaining.

Now, Paragraph 8 of the Complaint alleges a refusal to bargain. There are six sub paragraphs specifically setting forth acts of refusal to bargain in good faith. I do not believe they need more elaboration at this time. They are quite specific.

Paragraph 9 of the Complaint alleges the promulgation of a seniority policy which deprived employees of their seniority status.

The Trial Examiner may note that the motivation for this seniority policy is not alleged in Paragraph 9. The reason is that this paragraph is directed towards what is referred to as the per se super-seniority docket, Potlatch Forest, an early Board case.

I might add this allegation of the complaint is included specifically at the direction of the General Counsel, which wants to bring this doctrine before the National Labor Relations Board for review. It is the only case in which the per se doctrine has been exposed to a ruling.

*Offers of Counsel.*

Paragraph 10 of the Complaint deals with the seniority policy, super-seniority, as frequently referred to in the hearing, and alleges that it was discriminatorily motivated.

Paragraph 11 of the Complaint alleges the conversion from an economic to an unfair labor practice strike on or about May 11, 1959.

[22] Paragraph 12 of the Complaint alleges an unconditional offer on the part of striking employees to return to their former or substantially equivalent positions of employment.

Paragraph 13 alleges a refusal to re-instate said employees, and it refers specifically to those in Schedule "A", and the list of names is not all-inclusive, as previously indicated.

Paragraph 14 makes reference to divers other employees who suffered discrimination as a result of this policy. These names are not known. They may develop in the course of the hearing. The names themselves might be more appropriately brought up in a back-pay hearing, if necessary, at the compliance stage, if that is required.

Paragraph 14, the purpose of Paragraph 14 is to indicate there is another group of employees who have suffered discrimination by virtue of the seniority policy.

The remaining paragraphs of the Complaint are traditional conclusionary paragraphs.

*Trial Examiner:* There is no independent 8(a)(1) allegation, is there?

*Mr. Fleischut:* No, there is not. The parties have a long history of bargaining, as is indicated in the stipulation.

*Trial Examiner:* Do you want to make a statement, Mr. Wayman?

*Mr. Wayman:* I would like to reserve my statement, if I [23] make an opening statement, until I have heard the General Counsel's case.

I would remark, however, I am still puzzled by the proposition which changes this date from May 1st to April 1st, because —as I think the Complaint indicates— it says there was a conversion of the strike. It does not say it was an unfair labor practice strike from its inception.

*Trial Examiner:* What do you have to say about that, Mr. Fleischut?

*Mr. Fleischut:* The date of May 1st, as it appears in Paragraph 8, is a typographical error. It was meant to be May 11th, as consistent with the date of the conversion alleged in Paragraph 11.

*Mr. Wayman:* I could agree with that, all right.

*Mr. Fleischut:* I merely said April 1st to make it an inclusive period of time, but, as indicated, it was May 11th. I do not propose to prove that on April 1st it became—the refusal to bargain commenced on April 1st—but at times about and after that period of time. We do not expect to prove—nor will I argue—this was an unfair labor practice strike from April 1st. However, there are certain events that occurred prior to May 11th, and you notice the Complaint says on or about May 11th,

where it might be said the unfair labor practice and the bargaining picked up momentum. There are incidents which occurred, and I think April 1st is a more [24] conservative date, because if I say on or about May 11th, and there occurred something on May 10th or some date prior thereto, there may be some question.

*Mr. Wayman:* It is not only a conservative date, but it is a mighty misleading one to me. I have to know, before I start this case, whether or not it is alleged this was an unfair labor practice strike or an economic strike on April 1st, and from then up to some time—the Complaint says May 11th—fine. You can say any date you want, but I don't think you can say April 1st because then we attack the thing in an entirely different way. If this is an economic strike in its inception, that's one thing; and, if it is an unfair labor practice strike in your view in its inception, then I have a different problem. I think I must know these things before we go ahead.

*Mr. Fleischut:* I am stating I'm not alleging an unfair labor practice strike in the inception. Rather, April 1st is used as an inclusive date.

*Trial Examiner:* You mean for some background evidence?

*Mr. Fleischut:* That's right.

*Trial Examiner:* Well, under the circumstances, I certainly think you should withdraw—in view of your statement—you should withdraw your motion for leave to amend paragraph 8 to change it to April 1, 1959 rather than May 1st, because actually you state the date was subsequent to May 1st rather [25] than prior to it. I don't think that would affect you putting in testimony

that might shed some light on events that happened in the past or the many sins that have been committted under that procedure.

*Mr. Wayman:* With some correction later.

*Trial Examiner:* I would be inclined to deny your motion, but actually in view of your statement I don't think I should even be required to rule on it because you have just stated you are not pressing April 1, 1959 as the refusal-to-bargain date or that the strike became an unfair labor practice strike.

*Mr. Fleischut:* Will you give me a moment to consult with the union's counsel and perhaps we can straighten the matter out.

*Trial Examiner:* All right, go ahead.

*Mr. Fleischut:* Regarding the amendment to Paragraph 8, I will withdraw it, and leave it at May 1st.

*Trial Examiner:* Very well.

*Mr. Fleischut:* Subject, of course, to a motion at the end to conform the pleadings to the proof. But I will make it, the understanding, I do not allege it was an unfair labor practice strike in its inception, and so, as I understand, it remains at May 1st.

*Trial Examiner:* Now, with respect to your statement it remains at May 1st, and maybe at the conclusion of your case you will want to amend it, actually I only limit that motion to strictly matters of form and not matters of substance.

[26] *Mr. Wayman:* I was about to suggest that, but I am pretty sure Mr. Fleischut has made it abundantly plain he is not going to claim a change in substance here.

*Mr. Fleischut:* That's right.

*Trial Examiner:* I am convinced of that, too.

*Mr. Fleischut:* However, a moment to consider—thoughts bring new ideas, and we have another amendment to offer. This is with reference to Paragraph 14 of the Complaint, "Respondent has, since on or about June 24, 1959, discriminatorily laid off"—and I would add here "and otherwise discriminated against" — "divers employees."

Now, the reason why it becomes necessary to add "and otherwise discriminated against divers employees" is because of this; and I will explain it.

As a result of the super-seniority policy, almost everybody, I think—with practically universal application—every employee of this company has been affected, because, in affecting one person's seniority it has affected the relative seniority of everyone.

Now, read literally, Paragraph 14, as it is framed, refers to people who have been laid off. Paragraph 13, of course, refers to those who have been replaced, but there is another group of employees, and that's why I add "and otherwise discriminated against divers employees", because it is believed that there are employees who may have been bumped from a high-paying job [27] classification to a low-paying job classification, and have never been laid off.

Thus, as I view it, literally read, either Paragraph 13 or 14 of the Complaint would cover that. However, let me make it clear we seek in this Complaint to remedy all situations which arise out of the seniority policy, and I don't believe we are adding anything new here. We are

attacking a seniority policy. If it be found discriminatory then we look for a remedy to correct it in all respects, and I believe the addition of "otherwise discriminated against" covers those employees who may have bumped from one paying classification to another paying classification, or in some other manner—that is not apparent at this time—may have been discriminated against as a result of the seniority policy. I offer such amendment.

*Mr. Wayman:* I am afraid I will have to object to that amendment for the simple reason while we know there were some employees laid off as a result of our seniority policy, we can't imagine any other action that could have been taken, and I think the Complaint saying "we accuse you of this, just in case you might have done something—while we don't know what it is—but maybe you might have done something," that is not a good complaint. I don't think that is a proper amendment.

*Trial Examiner:* I think it does enlarge a great deal upon the complaint, and particularly in view of what counsel stated might develop, that he may have instances where employes were [28] bumped from a higher-paying job to a lower-paying job. Apparently he is waiting to see what evidence develops along that line. I will grant the motion, subject to this: That if the evidence reveals any such discrimination I will give you an opportunity to prepare your case along those lines, and grant a continuance, if necessary.

*Mr. Wayman:* Thank you, sir.

*Trial Examiner:* I think it will enlarge the Complaint a great deal.

*Mr. Wayman:* Potentially it does. We don't know what that might be. It is sort of a shot-in-the-dark thing.

*Trial Examiner:* Kind of playing it across the board.

*Mr. Fleischut*: I believe we are ready to call our first witness.

* * * * * * *

[29] *Mr. Fleischut*: As the Government's initial witness, I would like to call Mr. Ferrell under rule 43-B.

*Trial Examiner*: Mr. Ferrell?

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GORDON D. FERRELL, a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

*Mr. Wayman*: If the Trial Examiner please,—

*Trial Examiner*: Can you wait just a moment?

*Mr. Wayman*: Excuse me.

*Trial Examiner*: State your name for the record.

*The Witness*: Gordon D. Ferrell.

*Trial Examiner*: Where do you live, Mr. Ferrell?

*The Witness*: 3720 Meadow Drive, Erie, Pennsylvania.

DIRECT EXAMINATION

Q. (By Mr. Fleischut) Where are you employed, Mr. Ferrell?
A. Erie Resistor Company.
Q. In what capacity?
A. Director of Industrial Relations.

Q. How long have you held that position?

A. Since 1956. I was personnel director before that, in 1953.

Q. Before that were you employed by the company?

[30] A. Yes.

Q. Who was the chief company negotiator during the 1959 contract negotiations, including Resistor and the IUE, Local 613?

A. I was.

*Mr. Wayman*: If the Trial Examiner please, I should like to interpose an objection to calling the witness under this rule, since he is neither an officer nor a director of Erie Resistor Corporation.

*Trial Examiner*: What do you have to say?

*Mr. Fleischut*: It is quite obvious from the gentlemen's qualifications that he is a managing agent of the company because of the position he holds as Director of Industrial Relations, and it is tradition that such a person be examined under Rule 43-B.

*Trial Examiner*: I must disagree with you there. I think the term "managing agent", as used in the rule, does not mean anyone who happens to act as an agent, but, rather, one for the purpose of service of process, and in order to establish that the company is doing business in that particular area. I know there is some authority—I think it is the Garfunkel Case—which holds it was not prejudicial error to permit an agent of the company, who was not an officer or director or managing agent, to be called under Rule 43-B—I am not too certain of the authority—to call a person who is a director of

Industrial Relations or Plant Manager or Superintendent.

[31] *Mr. Fleischut*: Rule 43-B also encompasses a hostile witness. I think, from his qualifications as chief company negotiator, in a case where the company is the respondent, the Examiner may have no difficulty in coming to a conclusion this witness's interests are hostile to those of the Government.

*Trial Examiner*: I don't think that follows, per se, no. I think if it develops he is a hostile witness then you may interrogate him under rule 43-B. I don't think this witness qualifies as an officer, agent or director within the meaning of Rule 43-B.

*Mr. Fleischut*: However, he is a principal agent for these purposes, and I submit as such we should be able to examine him under 43-B.

*Trial Examiner*: Actually Rule 43-B doesn't say anything about "principal agent". It says "managing agent".

*Mr. Fleischut*: He is the Manager of Industrial Relations.

*Trial Examiner*: In my opinion the rule was never written with that in mind. A managing agent is one who is in an area for the purpose of service of process on a corporation or a non-resident partnership doing business there as distinguished from a company that is established there and has officers and directors and can be served, and does not apply to anyone who happens to be working for the company in the top or a responsible position. I may be wrong in it, but that's going [32] to be my ruling.

I find he is not qualified under Rule 43-B as an officer, agent or managing director.

Q. (*By Mr. Fleischut*) What are your duties as director of Industrial Relations?

A. My duties as director of Industrial Relations are to oversee the personnel activities of the company. This means the employment, the keeping of personnel records, the training and development programs that the company has, the first-aid facilities of the company, the testing facilities in connection with the employment, and the industrial relations, which includes the negotiation of contracts and processing of grievances.

Q. In all labor matters, matters of labor relations?

A. Yes.

Q. Who is the immediate supervisor of the personnel director?

A. The vice president of operations.

Q. I am referring to Mr. Bertone.

A. I'm sorry.

Q. What is Mr. Bertone's position with the company?

A. Mr. Bertone is an administrative specialist in my office.

Q. Are you his supervisor?

A. Yes.

Q. May I take it within the purview of your office you are responsible for and aware of personnel policies? Is that correct?

A. That is correct.

[33] Q. You are aware of the policies and actions of the company in its personnel department regarding the events of the 1959 strike?

A. Yes.

Q. How long have you had a bargaining relationship—and by "you" I mean Resistor—with IUE, Local 613?

A. Since 1951.

Q. Are you familiar with that contract?

A. With the first contract?

Q. Yes.

A. Yes.

Q. Are you familiar with the contract which expired March 31, 1959?

A. Yes.

Q. Did that contract have a union security clause in it?

A. Yes, it did.

Q. What type of a union security clause was that?

A. Union shop.

*Mr. Wayman:* May I object at this point, if the Trial Examiner please, and suggest the best evidence of what the contract contained would be the contract itself, and I think we probably intend to introduce it, anyhow, and perhaps it might be a good thing to do at this point.

*Mr. Fleischut:* I have one more question along this line.

*Trial Examiner:* All right, go ahead.

[34] Q. (*By Mr. Fleischut*) Do you—to your knowledge, in March of 1959 were all employees in the bargaining unit members of Local 613, IUE?

A. Yes, they were.

Q. Mr. Ferrell, a subpoena was issued to you to bring certain documents with you. Do you have them at this time?

A. Yes.

Q. You were asked to bring with you a list of all of the employees who were replaced during the strike of April 1 to June 25, 1959. Do you have such a list?

A. Yes, I have a list by replacement date and a list by seniority date.

*Mr. Wayman*: May we go off the record?

*Trial Examiner*: All right, off the record.

(Discussion off the record.)

*Trial Examiner*: On the record.

Q. (*By Mr. Fleischut*) The first thing requested, Mr. Ferrell, was a list of all employees replaced during the strike, indicating the dates of the replacements. Do you have such a list?

A. Yes.

Q. This will be indicated as General Counsel's Exhibit Number 3.

*Mr. Wayman*: I think you said there were two papers. You had to read the two papers, rather than just one.

*The Witness*: Yes.

[35] *Mr. Fleischut*: I'm referring to the list indicating dates of replacement.

*Mr. Wayman*: There will be two lists which, read together, answer your first proposition under subpoena.

*Mr. Fleischut*: That is correct.

*Mr. Wayman*: Two papers that are going to be General Counsel's Exhibit 3?

*Trial Examiner*: Do you want to designate those as 3(a) and 3(b)?

*Mr. Fleischut*: I'd rather have them as 3 and 4 because they are separate lists.

Q. (*By Mr. Fleischut*) You were also asked to bring a listing of replaced employees by their seniority dates, is that correct?

A. Correct.

(Thereupon, a document was marked General Counsel's Exhibit No. 3 for identification.)

*Mr. Fleischut*: And this will be marked as General Counsel's Exhibit Number 4.

(Thereupon, a document was marked General Counsel's Exhibit No. 4 for identification.)

Q. (*By Mr. Fleischut*) And a list of all employees laid off since the conclusion of the subject strike?

A. This is one we did not have readily available. We got your paper on Friday, and we're having this list made up and we will submit it.

[36] Q. You were asked to bring all newspaper, magazine and news media advertisements published by Erie Resitor during the strike. Do you have those documents?

A. This is a combination of items 3 and 4.

*Mr. Wayman*: By the way of explanation, we are a little bit unable to distinguish between news releases and newspaper advertising — advertisements, articles, whatever you want to call them—so they are all in one pile of papers.

*Trial Examiner*: All right. I see.

*Mr. Fleischut:* Let us mark them General Counsel's Exhibit 5 and refer to the individual sheets by the letters.

(Thereupon, a document was marked General Counsel's Exhibit No. 5 for identification)

Q. (*By Mr. Fleischut*) You were asked to bring Erie Resistor Corporation's two-page letter of June 5, 1959, signed by President G. Richard Fryling, to all employee members of Local 613. Do you have that?

*Mr. Fleischut:* This will be indicated as General Counsel's Exhibit Number 6.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 6 for identification.)

*Mr. Wayman:* Mr. Ferrell, whenever you have the papers asked for, if you would say "Here it is" it would be better.

Q. (*By Mr. Fleischut*) Erie Resistor Corporation letter of [37] one page, May 3, 1959, signed by President Fryling.

A. Yes.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 7 for identification.)

Q. (*By Mr. Fleischut*) A collective bargaining contract between the corporation and the union terminating March 31, 1959.

A. Yes.

*Mr. Fleischut*: General Counsel's Exhibit Number 8.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 8 for identification.)

Q. (*By Mr. Fleischut*) Local 613, IUE's letter of January 26, 1959, requesting the company to bargain, signed by the president of the union, Edward Bordonaro. I believe you have only the original of that?

A. Yes.

*Mr. Fleischut*: General Counsel's Exhibit Number 9.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 9 for identification.)

Q. (*By Mr. Fleischut*) The collective bargaining contract effective July 17, '59 to March 31, '60?

A. Yes.

*Mr. Fleischut*: Two copies of that. General Counsel's [38] Exhibit 10.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 10 for identification.)

Q. (*By Mr. Fleischut*) The "Company's Proposal" dated June 25, '59, with a one-page covering statement commencing "We hand you herewith the Company's proposal of June 25, 1959."

A. Yes.

*Mr. Fleischut*: General Counsel's Exhibit Number 11.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 11 for identification.)

Q. (*By Mr. Fleischut*) Erie Resistor Corporation's "Replacement Policy and Procedure", dated May 27, 1959.

A. Yes, Here you are.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 12 for identification.)

Q. (*By Mr. Fleischut*) Erie Resistor Corporation's amendment to Replacement Policy and Procedure? June 15, 1959. With a statement of qualifications attached.

A. Will you clarify that statement of qualifications? We could find no paper attached referred to as a statement of qualifications. I don't know what paper you are referring to.

Q. In the nature of a job application form, a series of lines and blocked areas.

[39] A. This I do not have with me. We don't know what you meant.

Q. You understand now?

A. I understand now.

Q. Let's put in that part of the exhibit which you do have, and it will be designated as General Counsel's Exhibit 13.

(The document above referred to was marked General Counsel's Exhibit No. 13 for identification.)

*Mr. Wayman*: We have found that paper you were talking about. We didn't know what it was

You had better let Mr. Ferrell see it to make sure it is the right one. Just don't shake your head. If it's the right one say "yes".

*The Witness*: Yes.

Q. (*By Mr. Fleischut*) Mr. Ferrell, I understand this was attached to General Exhibit 13?

A. I do not recall.

*Mr. Fleischut*: Let us number it, then—let the statement of qualifications, now putting one copy in evidence, be indicated as General Counsel's Exhibit 13(a), indicating it is a separate document.

(Thereupon, the document above referred to was marked General Counsil's Exhibit No. 13(a) for identification.)

Q. (*By Mr. Fleischut*) A telegram of June 25th from the Union President, Bordonaro, to the corporation. I believe you [40] have the original of that?

A. Yes.

(Thereupon, the document above referred to was marked general counsel's exhibit No. 14, for identification.)

Q. (*By Mr. Fleischut*) Erie Resistor Corporation's telegram of June 25th. You probably only have a copy of that.

A. This is a message from which the document was sent.

(Thereupon, the document above referred to was marked general counsel's exhibit No. 15, for identification.)

Q. (*By Mr. Fleischut*) The next item is the union's second telegram of the same date, June 25th. Do you have the original?

A. Yes, here it is.

(Thereupon, the document above referred to was marked general counsel's exhibit No. 16 for identification.)

Q. (*By Mr. Fleischut*) Contract agreement regarding section 11, initialed June 5, 1959.

*Mr. Wayman*: Excuse me, Mr. Trial Examiner, I don't have any objection to producing this paper but I don't like to characterize it "contract agreement" because I'm not quite sure what that means. If we do have a paper Mr. Ferrell can identify, then we have no objection to producing the paper itself.

*Trial Examiner*: All right.

Q. (*By Mr. Fleischut*) Do you have it? If I can see it we [41] will give it a new title.

*Mr. Wayman*: Sure.

*The Witness*: Here it is.

*Mr. Fleischut*: This paper is entitled "Section 11, Upgrade and Transfer", and let the record indicate that's what General Counsel's Exhibit 17 is. Will that be satisfactory, Mr. Wayman?

*Mr. Wayman*: Surely.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 17 for identification.)

*Mr. Wayman*: That was initialed June 5th, I believe it is, as shows on the paper.

Q. (*By Mr. Fleischut*) Number 18, Section 13, Departmental Reduction of Force and Layoff.

A. Yes, here it is.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 18 for identification.)

Q. (*By Mr. Fleischut*) Section 15, Division of Remaining Work, Et cetera.

A. Yes, here it is.

*Mr. Fleischut*: Number 19.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 19 for identification.)

Q. (*By Mr. Fleischut*) The next paper is entitled, I believe, [42] "Agreements Reached".

A. Yes, here it is.

*Mr. Fleischut*: Number 20.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 20 for identification.)

Q. (*By Mr. Fleischut*) The Corporation's policy statement, entitled "Recalled to work after strike". It is undated, but I believe it was about May 28th of '59.

A. This is another document which we do not know what you refer to and were not able to find anything with that type of title or heading on it.

*Mr. Fleischut*: I will identify it later, further identify it.

Q. (*By Mr. Fleischut*) Now, all recorded telephonic news releases made by the corporation between May 6th and June 25th.

A. Here they are, but they are in single and not in duplicate. We didn't have a chance to duplicate them. These are our only copies, so Mr. Wayman may want these back to make duplicates.

(Thereupon, the documents above referred to were marked General Counsel's Exhibit No. 21 for identification.)

Q. (*By Mr. Fleischut*) Statement of Company's position.

A. Yes.

*Mr. Fleischut*: Number 22.

[43] (Thereupon, the document above referred to was marked General Counsel's Exhibit No. 22 for identification.)

Q. (*By Mr. Fleischut*) A two-page letter signed by President Fryling, of April 17th, to "All Erie Resistor Employees"

A. Yes, here it is.

*Mr. Fleischut*: Exhibit Number 23.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 23 for identification.)

Q. (*By Mr. Fleischut*) A two-page letter of May 29th to All Employees.

A. Mr. Fleischut, we have no letter of May 29th. There was a letter of April 29th. If this is the one you mean, I have it, but we have no letter of May 29th.

Q. May I see it?
A. Yes.

*Mr. Fleischut*: Yes.

*Mr. Wayman*: Yes what, Mr. Fleischut?

*Mr. Fleischut*: Yes, that is the document I was looking for. I am sorry. That will be marked Exhibit Number 24 of the General Counsel.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 24 for identification.)

Q. (*By Mr. Fleischut*) A one-page letter of May 14th to members [44] of Local 613, IUE.
A. Yes, I have that.

*Mr. Fleischut*: Number 25.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 25 for identification.)

Q. (*Mr. Fleischut*) A letter of May 19th to all members of Local 613, IUE:
A. Yes, here it is.

*Mr. Fleischut*: Number 26.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 26 for identification.)

Q. (*By Mr. Fleischut*) A strike settlement agreement of July 17, '59.
A. Yes, here it is.

*Mr. Fleischut*: Number 27.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 27 for identification.)

Q. (*By Mr. Fleischut*) Number 28, the Maintenance-of-Membership, dated August 11, "60", with an attached resignation form.

A. Yes, here it is.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 28 for identification.)

[45] Q. (*By Mr. Fleischut*) Number 29. Corporation's list of people permanently replaced, dated June 26th.

A. Yes, here it is.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 29 for identification.)

Q. (*By Mr. Fleischut*) A list of people permanently replaced dated July 6th.

A. Yes, here it is.

*Mr. Fleischut*: Number 30.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 30 for identification.)

Q. (*By Mr. Fleischut*) Number 31, a list of people permanently replaced dated August 18th.

A. Yes.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 31 for identification.)

Q. (*By Mr. Fleischut*) Number 32, a list of replaced employees, indicating their job and department number, name of replacement employee, date of replacement, and the date the replaced employee applied for reinstatement. I also asked for the address of the replacing employee.

*Mr. Wayman*: Now, if the Trial Examiner please, we have told Mr. Fleischut we don't have the addresses of these employees [46] on any list, and we prefer not to give them the addresses of the replacements since they can't possibly be of any relevance or use in this case. I don't know how Mr. Fleischut feels about the addresses, but we labored pretty hard to get him a lot of paper already, and we think this is some paper he doesn't really need.

*Trial Examiner*: You want the address of each of the replacement employees?

*Mr. Fleischut*: The replacing or replacement employees, I would like to have. I am not waiving that at this time. I believe it is important, and perhaps I must subpoena these.

*Mr. Wayman:* This is something that could be determined in the course of the investigation. I think it is not a very proper time to determine that at a date set for the hearing. There have been months and months in which that could have been done if it was necessary.

We are under the apprehension now, I think for some cause, as our own case will show, that the addresses of these people might be used for the pur-

pose of harassing and troubling them. We underwent a good deal of difficulty in the course of this strike, and we are certainly not interested in subjecting them or making it possible for anyone to subject them to any more of these difficulties.

*Mr. Fleischut:* You are not suggesting that government counsel would harass the employees, are you?

[47] *Mr. Wayman:* As far as I know, Mr. Fleischut, no Government counsel would harass these employees except, perhaps, with questions they would not like to answer. But I can't see any possible use for these addresses, and I do think if it were for the purpose of subpoenaing them as witnesses this is something that could have been done in the course of a long investigation.

*Trial Examiner:* When did you request this information on the names and addresses of the replacing employees?

*Mr. Fleischut:* The subpoena was issued last week.

*Mr. Wayman:* The subpoena was handed to the company on Friday morning at a time at which Mr. Ferrell was in my office getting other papers together. He wasn't even in his office on Friday morning. We were working, getting this together, which I think Mr. Ferrell has done with a good deal of good nature, maybe more than I would have displayed had I been called on to do it over the weekend. It had to be done on Saturday and Sunday.

*Mr. Fleischut:* As the Trial Examiner may be aware, the Government does not make a practice of

using pre-hearing subpoenas and thus this information—for all practical purposes—is placed beyond our reach.

*Mr. Wayman:* There was no suggestion and certainly no evidence the General Counsel couldn't have gotten this, if he wanted it, before the hearing.

[48] *Trial Examiner:* I don't think there is any question before me now as to compliance with that phase of the subpoena. If the company feels the information is unnecessary and immaterial to the issues here, and you feel that it is,—well, during the course of the hearing it may develop that you need a subpoena, and if the problem comes up now, all right. Right now I don't see there is anything before me other than you are right now taking in many exhibits by way of stipulation.

Q. (*By Mr. Fleischut*) Mr. Ferrell, you have the rest of this matter requested in Item 32, is that correct?

A. I have one copy of it, however, instead of two. We can get you another one.

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 32 for identification.)

Q. (*By Mr. Fleischut*) Number 33, I have asked for the names and addresses of all temporary employees hired during the strike, and the positions held. Anticipating the same objection, I will save words by saying I understand the company has not brought the addresses, and if we may apply the same rules to this exhibit I will otherwise accept what we have.

*Mr. Wayman:* We have the additional difficulty, Mr. Fleischut, we aren't able to tell what positions the temporary replacements held. In other words, as I understand it, they were [49] used as sort of a floating labor pool.

We do have a list of names, which is the best we could do, and when they were put on and what happened to them, when they left. That is about as close as we could come to that. Anything more would have to be developed by testimony, I think.

*Trial Examiner:* All right.

*Mr. Fleischut:* Let this be marked General Counsel's Exhibit Number 33.

*The Witness:* I will say yes, here it is.

(Thereupon, the document was marked General Counsel's Exhibit No. 33 for identification.)

Q. (*By Mr. Fleischut*) Do you have some others there for me?

A. That is the end of the list.

*Mr. Wayman:* Gordon, you must speak up when you are talking to Mr. Fleischut, just as when Mr. Fleischut is talking to you, because otherwise the reporter can't hear you.

Q. (*By Mr. Fleischut*) Mr. Ferrell, with regard to General Counsel's Exhibit Number 3, that was the document that had the listing of the employees—

*Trial Examiner:* Do you want to offer all of these exhibits in evidence?

*Mr. Fleischut:* I was going to proceed upon having the witness identify these matters, describe the circumstances and background about which it came about. Naturally, he will not testify as to the contents, but he will explain for [50] us the background of each of them. The procedure I had planned upon using was that, and then offer them all in evidence.

*Trial Examiner:* My understanding, many of them there is no dispute about.

*Mr. Wayman:* We have no objection to putting any of these papers in that we have produced, in evidence, and, as far as we know, they are genuine papers. We think they are.

*Mr. Fleischut:* It still becomes important, however, to explain the subject matter or the origin of each one.

*Trial Examiner:* I think he can do that.

*Mr. Fleischut:* Do you want me to put them in evidence first?

*Trial Examiner:* I think we might as well wholesale them in evidence, and then—you should be referring, in fact, to the documents as marked for identification now, but, if you are going to proceed on an individual theory, I think—since there is no objection to the documents themselves—they have been produced by the company—why not receive them in evidence, and then if you want to conduct any examination on them you may do so.

*Mr. Fleischut:* All right, I now offer into evidence General Counsel's Exhibits 3 through 33.

*Mr. Wayman:* I have no objection.

*Mr. Davidson:* No objection.

[51] *Trial Examiner:* All right, the documents may be received in evidence and marked as General Counsel's Exhibit 3 through 33.

(The documents heretofore marked General Counsel's Exhibits 3 through 13, 13(a), and 14 through 33 for identification were received in evidence.)

Q. (*By Mr. Fleischut*) Mr. Ferrell, would you examine General Counsel's Exhibit Number 3? What is General Counsel's Exhibit Number 3?

A. This is a list of replaced employees, in order, by replacement date.

Q. And the date appearing to the right of each name indicates what?

A. The date on which the employee was replaced.

Q. During the strike, is that correct?

A. That is correct.

Q. And General Counsel's Exhibit Number 4, would you examine that document? What is General Counsel's Eshibit Number 4?

A. This is a list of the same replaced employees, arranged in order by seniority date.

Q. The date appears to the right of the name, is that correct?

A. That is correct.

Q. That is the employee's true or actual earned seniority, is that correct?

[52] A. This is their actual seniority date with the company, yes.

Q. The beginning of their current employment with the company, is that correct? And by the word "current" I don't mean to deceive you. I understand the employer considers they are no longer employees, but as of the date of replacement, that is the beginning date of their calculation of seniority, is that correct?

A. If none of these employees lost seniority due to leave of absence in which seniority did not accumulate, in which case the seniority would have been adjusted, then this date is exactly either their date of employment or their adjusted seniority date. It is the date that was on the seniority list as of March 31, 1959.

Q. In the ordinary course of matters what things would that date be used for?

A. This date would be used to determine the selection of an employee when several of them would bid on a job in which they were both qualified, and the senior employee would be entitled to the job. It would be used in reduction of force where an employee was no longer needed on their job, and it would be used to bump another employee with lesser seniority. It would be used to determine the amount of vacation to which an employee might be entitled in any one year. It would also be used in determining the length of service with the company in connection with the retirements and the pension plan. Those [52] are the major things the seniority would be used for.

Q. Did your list include bumping, bidding and layoff?

A. I beg your pardon?

Q. The seniority date is used for layoff purposes, is that correct?

A. Yes, I said in reduction of force it determines who the employee could bump, and it follows if there is no one they could bump they then would go on layoff, and the seniority date would be used to recall them from layoff.

Q. General Counsel's Exhibit Number 5—excuse me—strike that. I had asked for a list of all employees laid off since the conclusion of the above strike, and you said you did not have that with you, is that correct?

A. That is correct.

Q. Did you tell me you were compiling that list?

A. Yes, we are.

Q. You had not previously compiled it?

A. That's right.

Q. Now, with reference to General Counsel's Exhibit Number 5, news releases, advertisements and so forth, will you examine that document, please? Perhaps, Mr. Ferrell, you can explain this first sheet to us. "WICU Television Script." What is this?

A. This is the text of a talk that was made on television over WICU by the president of the company, Mr. Fryling, on [53] April 20, 1959.

*Mr. Fleischut:* I think it would be well to mark this television script General Counsel's Exhibit 5(a), because there are several items here, if the record may reflect that.

*Mr. Wayman:* I have no objection that that at all.

*Trial Examiner:* All right, the script is marked General Counsel's Exhibit 5(a).

Q. (*By Mr. Fleischut*) What is the next item?

A. This is a paid ad which was in the Erie Times paper of May 25, 1959, offering a one-thousand-dollar reward to be paid by the company for information leading to the arrest and conviction of the first person or persons found guilty of secret underhanded assault, vandalism or anonymous threats directed against any presently working Erie Resistor employee.

*Mr. Fleischut:* Let this be marked 5(b). Mr. Ferrell, it won't be necessary to read the exhibits, as they speak for themselves.

*Trial Examiner:* He read that in response to your question.

*Mr. Fleischut:* I asked what it was and how it came about. What it was.

Q. (*By Mr. Fleischut*) What paper was that published in?

A. The Erie Times.

(Thereupon, the documents above referred to were marked General Counsel's Exhibits Nos. 5(a) and 5(b) for identification.)

[54] *Mr. Waysman:* Could we establish at this time the Erie Times is a newspaper of general circulation in the City of Erie?

*Mr. Fleischut:* It may be so stipulated.

*Trial Examiner:* The stipulation may be received in evidence.

*Mr. Fleischut:* It is the only newspaper of general circulation in Erie.

*The Witness:* Yes.

Q. (*By Mr. Fleischut*) The next item?

A. A page ad entitled "Report to the community on the Erie Resistor Strike," that appeared in the Erie Times on Sunday, June 14, 1959.

Q. Does it purport to set forth the company's position in the strike at that time?

A. Yes, it does.

Q. Let us mark that (c); 5(c).

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 5 (c) for identification.)

Q. (*By Mr. Fleischut*) What is the next item in Exhibit 5, Mr. Ferrell?

A. The next item is a classified ad that appeared in the Erie Times on June 17, 1959. It was a "Help Wanted" ad for women employees.

[55] Q. I see two papers mounted together there. Are the both the same day, or perhaps you could distinguish between them.

A. These two papers, two items, both appeared in the paper on the same day. One is simply a news item, which is not a paid ad by the company. We just happened to have this sheet put together, in chronological order, by dates of the newspaper clippings, and the one that you wanted was the paid ad that happened to be on this sheet.

*Mr. Wayman:* I'll agree the news item is not part of the exhibit.

*Trial Examiner:* All right.

*Mr. Fleischut:* We will consider that as irrelevant and not responsive to the subpoena.

The second item on the page, the "Women Wanted" ad,—give me the date again, Mr. Ferrell. June 17th?

*The Witness:* It is right on top of the sheet there.

*Mr. Fleischut:* Let that be marked 5(d).

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 5(d) for identification.)

Q. (*By Mr. Fleischut*) What is the next one?
A. The next is the text of a news release which was given to the Times news—to the radio and television stations in Erie, on May 23, 1959.
Q. Have you personal knowledge was it broadcast?
[56] A. I do not have personal knowledge, no, sir. I assume it was.

*Mr. Fleischut:* Let us mark this news release Exhibit 5(e).

(Thereupon, the document above referred to was marked General Counsel's Exhibit No. 5(e) for identification.)

Q. (*By Mr. Fleischut*) What is next, sir?
A. The next is another paid advertisement in the Morning News, the morning edition of the Times, on May 21, 1959. This ad gives the telephone number which anyone seeking information about the Erie Resistor Strike could dial in order to get that information.
Q. When they called that number what would occur?
A. There was a recorded message which would be given over the phone in response to the call.

Q. I see some other items on the page besides that. What are they?

A. This, again, like the other exhibit, was taken from our chronological record in order of date, and this other item happened to appear on May 21st also.

Q. But the date of May 21st is the correct date of the advertisement?

A. That's the correct date of the advertisement, and "Call 6-6221" is the paid ad.

*Mr. Fleischut:* That will be marked "(g)", 5"(g)."

[57] (Thereupon, the document above referred to was marked General Counsel's Exhibit No. 5 (f) for identification.)

Q. (*By Mr. Fleischut*) Are there any other items in Exhibit Number 5?

A. No, that's all we have.

Q. There were no other advertisements of any type placed by the company during the strike concerning these matters?

A. Not to my knowledge. Not to my knowledge.

Q. Would you have knowledge of such matters?

A. I had what I thought was a complete file, and these were taken from the file.

Q. Such knowledge would be in the purview of your office, is that correct?

A. Yes.

Q. Had there been any further public releases concerning the merits of the company's position towards an illumination of the facts as you saw them, as the company saw them, concerning the strike, they would have been included, is that correct?

A. Yes.

Q. And were there any other ads, advertisements for personnel, that would also be included? They would be included, is that correct?

A. That's correct.

Q. And there were no other ads, is that correct?

A. No other ads.

[58] Q. Let's go on to the next exhibit. The letter of June 10th. Number 6. I note this letter is addressed "to all employees of Erie Resistor Corporation and members of IUE Local 613". What was the circulation list for this letter?

A. This was the circulation list—it included all of the employees of the Erie Resistor who either had been at work on March 31, 1959, who were working at the time the letter was published, or who were on layoff at the time the letter was published.

Q. Were there any other persons included on this mailing list?

A. For this particular letter?

Q. Yes. Any public officials, news media or anything of that type?

A. I would have to say this in response to your question. As the strike progressed a number of people wrote in and asked to be put on the mailing list. Now, who was on that mailing list when this letter of June 10th was sent out, I do not know.

Q. You used this same list throughout the strike, is that correct?

A. Yes.

Q. And the list included employees, replacements, replaced employees, and laid-off employees, is that correct?

A. That's correct.

Q. Then you also added, did you not, to that list, public [59] officials and news services and so forth?
A. Interested individuals who asked to be included.
Q. Did that include news-gathering agencies and persons—radio, newspapers and so forth, television?
A. I can't answer that.
Q. Now, the letter of May 3rd, General Counsel's Exhibit Number 7, was that letter circulated by the company on the same list as was the previous letter? That is, the one of June 10th?
A. Yes.
Q. The later letter of June 10th?
A. Yes, it was.
Q. Now, skipping over the contract, General Counsel's Exhibit Number 8, and directing your attention to General Counsel's Exhibit Number 9, the letter of January 26th, was this letter received by your office?
A. Yes, it was.
Q. Let us skip over General Counsel's Exhibit Number 10, and go to General Counsel's Exhibit Number 11. What is General Counsel's Exhibit Number 11?
A. General Counsel's Exhibit Number 11 is the company's reply to the union's proposals made on June 24th, together with a letter of transmittal which stated "We hand you herewith the Company's proposal of June 25th"—and so on.
Q. Was this letter given to the union in the course of the [60] negotiations?
A. Yes, it was.
Q. General Counsel's Exhibit Number 12, "Replacement Policy and Procedure" of "July" 27th. What is this? Who was it given to, and when?

A. General Counsel's Exhibit Number 12 is the replacement policy and procedure statement of the company date *May* 27, 1959, and sets forth in itemized form the manner in which replacements would be made and the manner in which reduction of force would be handled, and recall from layoff would be handled. This is particularly with reference to replacement employees who were to be accorded a twenty-year additive to their regular seniority date.

Q. Now, was this letter given to the union negotiators? This exhibit?

A. I do not recall whether this was ever given to the union. This was explained to the union.

Q. When was this explained to the union?

A. I can answer your question if you'll let me consult my notes.

Q. Any time you wish to you may refer to the stipulation, the list of meetings, which is in evidence—for your use—as General Counsel's Exhibit Number 2. And, if you have further notes, I don't mind if you refer to them to refresh your recollection.

[61] A. I would like to answer your question, but after some fifty-two meetings and two hundred and eighty hours it is a little difficult to pinpoint what happened at a particular day or hour.

*Mr. Wayman*: I suppose we might have a five-minute break?

*Trial Examiner*: Yes, we will take a five-minute recess.

(Recess.)

*Trial Examiner*: All right, the hearing will be in order. Go ahead, Mr. Fleischut.

Q. (*By Mr. Fleischut*) When we adjourned, Mr. Ferrell, you were about to consult your notes with reference to the General Counsel's Exhibit Number 12, the replacement policy and procedure of 5/27/59.

A. Right. In answer to your question, the company did discuss the twenty-year super-seniority policy with the union at the meeting they had on the following day, or May 28th. We did not give them a copy of our policy of May 27th.

Q. This matter you discussed, was that the subject matter of the exhibit, General Counsel's Exhibit Number 12. which I referred to? Is that correct?

A. Yes.

Q. That was discussed and explained to the union on the 28th of May, '59?

A. On the 28th of May.

Q. But they were not presented with a copy of it at that time?

[62] A. That's right.

Q. Were they ever presented with a copy of it, if you know?

A. I don't know that they were ever presented with a copy of it.

Q. But it was explained fully at that time?

A. Yes.

Q. Now, was there a time when it was placed into effect? That is, the policy as outlined in General Counsel's Exhibit Number 12?

*Mr. Wayman:* If the Trial Examiner please, this is objected to as calling for a rather difficult

legal conclusion, I think. The difficulty has occurred to me also, I might say, as to was the policy placed into effect where the only policy or the only possible effect the policy could have would be after the strike was over. In other words, the people working. In any event, the policy directed to avoiding layoff or replacements couldn't very well be placed into effect. I think, of course, the form of the questions—

*Trial Examiner:* You gentlemen know more about this case than I do, but, from the form of the question, it seems like he can answer. If the witness can't, I think he can say so.

*Mr. Wayman:* If he is able to I think that's all right, but I just wanted to point out the difficulty in the wording of the question. I don't know exactly how it was worded.

*Trial Examiner:* I will overrule the objection, and, the [63] witness on the stand, if he can explain or answer the question and explain it, he may do so. If he can't, he may so state.

*The Witness:* Will you please restate your question?

Q. (*By Mr. Fleischut*) This policy outlined as General Counsel's Exhibit Number 12, which was explained to the Union on May 27th of '59, when did this become policy?

A. This became policy sometime prior to May 27th. It was written down on May 27th, and explained to the union on May 28th.

Q. Can you tell us when, prior to May 27th, it became policy?

A. No, but I can tell you this. That with the beginning of the hiring of replacements—

Q. What date was that?

A. The first mention of this in negotiation session was on May the 11th, and at this time we told the union that as replacements came in they were being assured they would not be laid off as a result of the settlement of the strike and because of the large number of employes on layoff, and this meant in order to sandwich these replacements in between and still keep them at work; not be in conflict with the seniority sections of the contract, that we would have to accord them some sort of super-seniority. This was May 11th, at the very beginning, and at that time we didn't know exactly what kind or [64] how we were going to do it, except the problem presented itself and it was evident we were going to have to take care of it in some manner similar to this. It was on May the 27th that enough replacements had been hired, or coming in, we felt we had better put this in writing in order to be sure that everyone was handling it in a uniform manner. This was the reason for reducing this to writing on the 27th. Also on the 28th we explained this to the union, and it appeared employees were going to have to have in the neighborhood of twenty years' seniority following the termination of the strike in order to be able to work, and this is where the twenty years came from. It was developed from the projection of what our work force would be on the basis of our volume of orders which we expected to have following the termination of the strike, so this is how it was developed and how it was arrived at twenty years. Does that answer your question?

Q. That covers quite a few questions. That is sufficient.

A. All right.

Q. The policy was composed in written form on the 27th, is that right?

A. That is right.

Q. Now, who participated in the composition of that document?

A. Of the formula or the document?

Q. Let's take them one at a time. Who composed the wording of the document?

[65] A. I did.

Q. Now, what is the origin of the policy? With what group? Who?

A. The origin of the policy was with the members of the company negotiating committee, with the managers of our three divisions, the officers of the company, myself and counsel.

Q. And although not reduced to writing, it was put into effect on May 11th, is that correct?

A. No, that is not correct.

Q. You told me you hired your first replacements on May 11th.

A. I said it became apparent on May 11th we were going to have to find some way of implementing our policy of assuring replacements that they would not just be temporary replacements and would not be laid off as a result of the termination of the strike.

Q. You had a problem on May the 11th, is that correct?

A. We had a problem May the 11th.

Q. When did you effectuate the solution? When did you solve this problem? You told me that you composed

the document on the 27th and it had been in effect before that time.

*Trial Examiner:* Actually that wasn't his testimony, that it had been in effect. He said it was mentioned to the union on May 11th, and then, as replacements came in in large numbers, they knew something had to be done, and then the policy was put in writing on May 27th and brought up at the union meeting [66] on May 28th. I think you have been all over that.

Q. (*By Mr. Fleischut*) I was under the impression you said the policy was put in effect, although not reduced to writing, before May 27th, is that correct?

A. We knew that some sort of super-seniority policy would have to be developed. We cast around to see what seemed to be the thing we needed to fit the situation, and this is what we finally came up with shortly before the 27th.

Q. Now, what is "shortly before"? That is my question.

A. I would say one or two days.

Q. Now, General Counsel's Exhibit Number 13 is a policy statement of June 15th, I believe.

A. Yes.

Q. Would you explain what was done with this piece of paper?

A. Yes. On June 15th this amendment to the replacement policy and procedure, together with the replacement policy and procedure dated May 27th, was posted on the bulletin boards of the company for the first time, and we explained on this supplement that we were endeavoring to find some answer to this thing, and the best thing we could come up with

would have been the twenty-year seniority plan, and that unless we were able to negotiate some other plan with the union that this is the one we would follow.

Q. You posted General Counsel's Exhibits 12 and 13 together, 13 as an amendment to 12, on June 15th, is that correct?

[67] A. Yes, sir.

Q. Now, was the policy, as amended in the notice of June 15th, put into effect as amended at that time?

A. You will have to define what you mean by "putting into effect."

*Mr. Wayman:* Again, if the Trial Examiner please, I think Mr. Fleischut is not intending to be unfair at all,—

*Trial Examiner:* I think I can follow you now

*Mr. Wayman:* —but the difficulty is, if I remember that paper correctly, there are two things in it. One is a procedure they followed in placing people on jobs, and the other is the so-called twenty-year seniority. You couldn't have any need for super-seniority—or whatever you want to call it—until the strike was over. You say "Put it into effect." That could only be at the end of the strike. But if you're talking about the procedures, that is something else.

*Mr. Fleischut:* I think I can explain my question.

*Mr. Wayman:* I'm not suggesting for a moment that you're trying to be unfair with the witness, but—

*Trial Examiner:* It is a question of semantics, "putting into effect," instead of "procedures"?

*Mr. Wayman:* Yes.

Q. (*By Mr. Fleischut*) I will try to qualify my question. A written piece of paper by itself entitled "Proposal of policy" may be nothing but a proposal. It represents an idea. [68] The second step is that when that becomes an action, becomes policy. I assume you can grasp that distinction.

A. Yes.

Q. Now, you have told me with regard to the May 27th policy letter, it became an action a few days before the 27th, and; with regard to the one on the 15th, my question is when did that become an action, and not an idea?

*Mr. Wayman:* Excuse me. I think I must object to the question there because I don't think it properly characterizes the answer given by the witness to the previous questions. It may be a question of semantics. Maybe it is not important, but I think perhaps it becomes important if you say "When did you put this policy into effect?" You are suggesting the company at some time prior to May 27th had made up its mind "this is it, and nothing more."

*Trial Examiner:* Could the witness answer when the company adopted or formulated this policy, as distinguished from when the policy was put into effect?

*Mr. Wayman:* That, I think, the witness could explain. He might have to talk a little bit to do it, but that's why we have witnesses.

*Trial Examiner:* This witness understands.

Q. (*By Mr. Fleischut*) When was the 6-15 amendment adopted?

A. You are referring only to the amendment?

Q. When did you amend the other policy which has already been [69] adopted?

A. On June 15th.

Q. And you posted it for all of the employees to see on the bulletin boards, is that correct?

A. Yes.

Q. And was 13(a) attached to 13 at that time? General Counsel's Exhibit 13? 13(a), a statement of qualifications?

A. Yes, it was.

Q. Now, General Counsel's Exhibit Number 14 is a telegram is that correct?

A. Yes.

Q. And the company received that, is that correct, on the date indicated?

A. The company received this telegram on the 25th.

Q. And what did the company do in reply to that telegram?

A. We sent a reply to the union.

Q. That is General Counsel's Exhibit Number 15, is that correct?

A. That is correct.

Q. And following that you received General Counsel's Exhibit Number 16, is that correct?

A. That is correct.

Q. Now, General Counsel's Exhibits Number 17, 18 and 19, what are they?

[70] A. Seventeen, eighteen and nineteen are the agreements reached on Section 11, Section 13, Section 15.

Q. Of the contract?

A. Of the labor agreement.

Q. And what does the initialling indicate?

A. This indicates agreement between the company's and the union's committees.

Q. They agreed on those sections on those dates, is that correct?

A. Correct.

Q. Now, with regard to Section 11, General Counsel's Exhibit Number 17, it is initialled two days later than the others.

A. One day.

Q. One day. Was that initially agreed upon at another date?

*Mr. Wayman*: May I hear that question again, please?

*The Witness*: I'm sorry. I'll have to ask you to clarify that. You're asking me if this paper, exactly as it is, was agreed to at some prior date? If you are, the answer is "no".

Q. (*By Mr. Fleischut*) Were portions of it agreed to at some time prior to the initialling date?

A. Again I will have to ask you to clarify the question.

Q. These three sections contained in General Counsel's Exhibits 17, 18 and 19 were discussed together, is that correct? They all deal generally with the principle of seniority, movement [71] of seniority, is that correct?

A. Yes.

Q. They were all agreed upon on June 4th, is that correct?

A. All except Section 11, which was agreed to on June 5th.

Q. Excuse me. Let me look at Section 11. I refer you to the fourth line from the bottom. There is an initialled alteration there, and there is also a strike through about the middle of the page.

A. Yes.

Q. When were these changes made?

A. On the 5th.

Q. And other than the changes, when was it agreed upon?

A. It was probably discussed on the 11th or on the 4th, the same time the others were discussed, but it was finally approved and agreed on on the 5th.

Q. All right. General counsel's exhibit number 20, what is that?

A. This is the summary of the agreement reached on June the 4th.

Q. General counsel's exhibit number 21, explain please?

A. General counsel's exhibit number 21 is the text of the recorded messages which were taped and — I won't say dispensed. They were given out over the telephone when they called 6-6221.

Q. What was the number given out in the newspaper?

[72] A. Yes.

Q. Any member of the public that wanted to learn the company's position on the strike could call that number?

A. Yes.

Q. Then general counsel's exhibit number 21, are those messages, is that correct?

A. That's correct.

Q. Now I notice on some of these pencil markings at the bottom or on the reverse side of the sheets, are they part of the telephonic messages?

A. No.

Q. Are they completely irrelevant and have nothing to do with the messages at all?

A. I will have to examine them.

Q. Let's go through them day by day and indicate which corrections are and which are not.

A. On May the 9th the corrections on the sheet were included in the telephone messages. Notations on the message for May the 11th at the bottom of the page have nothing whatsoever to do with the message. Notations on May 12th were suggested alternate ways of saying some of the things which were included in the message, or that could be added if there was time on the tape. We were limited to a two-minute tape.

Q. Where they included on the tape?

A. They were not included unless they were written into [73] the body of the message. The notation on May 14th could have been a second message for that day. Whether it was not, I don't know. The pencil notations on the message for May 14th were included in the message — notations on the message for May 15th were included in the message.

Q. Please indicate if there are some —

A. The last paragraph of May 15th may or may not have been included, depending on the length of time

left on the tape, and I do not know whether it was included or not.

Q. That is the paragraph marked in the brackets, is that correct?

A. That is correct. The notations on the message of May 29th were included in the tapes. The notations on the message of June 16th were included in the tape message.

Q. Indicate or make a comment on that one.

A. On June 4th the notation at the bottom of the page has nothing to do with the message. The notations on the message of June 7th were included. That is the morning message of June 7th. This is also true of the afternoon message on June 7th, the notations were included. June 10th the pencil notations were included in the message. On June 14th the pencil notations were included. On June 16th the pencil notations were included. June 17th the pencil notations were included. On June the 18th the pencil notations may or may not have been included in the message.

[74] Q. That is the word "approximately" instead of "nearly", is that correct?

A. Yes. June 19th the pencil notations were included in the tape message. June 21st pencil notations were included. The message of June 22nd, the pencil notations were included. The message of June 25th the pencil notations were included.

Q. General counsel's exhibit number 22 statement of position of April 8th. What is that?

A. General counsel's exhibit number 22 is a statement of the company's position as was presented in the first meeting with the Federal Mediator meeting

following the beginning of the strike at which the company's basic objectives and negotiations were set forth, an outline of our business problems was included, and some history of the bargaining which led up to the — through March 31, 1959, and precipitated the strike.

Q. The statement of position was given to the union negotiating team on that date?

A. Yes, it was.

Q. General counsel's exhibit number 23. This is a letter to all employees. Now to whom was it sent?

A. It was sent to all employees of the Erie Resistor Corporation, including the bargaining people, the salaried people and those who were on strike.

[75] Q. This is the same distribution list that you referred to before, is that correct?

A. Correct.

Q. I understand this included everybody who was employed before the strike, or at the time the letter was written, is that correct?

A. Yes.

Q. Whether they were on strike, laid off, rehires, replacements or whatever is that correct?

A. Yes.

Q. Anyone who in the most liberal sense of the term might be considered an employee, is that right?

A. That's right.

Q. Then the letter of April 29th, general counsel's exhibit 24, to whom was that sent?

A. Sent to the same group of employees.

Q. All right. General counsel's exhibit number 25, the letter of May 14th?

A. This was sent to all members of local 613.

Q. That includes the same mailing list as referred to previously?

A. No, I think there is a distinction between all employees and all members of local 613.

Q. This were to employees who were members of local 613?

A. Yes.

[76] Q. It was mailed to them?

A. That's right.

Q. What brought this letter about, what action?

*Mr. Wayman*: Was the question what brought this letter about, what action?

*Mr. Fleischut*: What action precipitated the writing of this letter?

*Mr. Wayman*: I forego objection, but I am a little puzzled myself — what action by whom?

*Mr. Fleischut*: Why was the letter written?

*Trial Examiner*: I think that answers your objection. Why was it written?

*The Witness*: This was written in response to a letter sent to some working employees who had crossed the picket line and signed by the president of the union on behalf of local 613.

Q. (*By Mr. Fleischut*) Did you see a copy of that letter?

A. Yes, I did.

Q. Would you identify this document which we will mark general counsel's exhibit number 34, for identification.

(Thereupon, a document was marked General counsel's exhibit 34, for identification.)

Q. (*By Mr. Fleischut*) Can you identify that?

A. Yes, I can.

Q. What was it?

[77] A. It is a letter that I just referred to.

Q. This is the reason you wrote general counsel exhibit number 25, is that correct?

A. This and the reaction from the employees who got it.

*Mr. Wayman*: I simply note that the name of the person to whom it was evidently addressed, has been cut out, which is all right with us, but I think the record should show there was a name and address that appeared at the usual place.

Q. (*By Mr. Fleischut*) Mr. Ferrell, can you tell us the circumstances under which this cut out was made in this letter, general counsel's exhibit for identification, number 34?

A. Why was it cut out?

Q. Yes. My question was did you cut this out before giving it to the government so the name would not be identified?

A. Yes, not in fear of the government but so there would be no reprisal against the individual by anybody else.

*Mr. Fleischut*: I move now the admission in evidence of general counsel's exhibit 34 for identification.

*Mr. Wayman*: I have no objection.

*Trial Examiner*: It may be received in evidence and marked as general counsel's exhibit number 34.

(The document heretofore marked general counsel's exhibit 34, for identification, was received in evidence.)

Q. (*By Mr. Fleischut*) General counsel exhibt number 26, will you identify that? Was that sent to the mailing list [78] previously described by you?

A. This letter was sent to all members of local 613.

Q. By the company?

A. By the company.

Q. General counsel exhibit number 27, tell us what that is?

A. General counsel's exhibit number 27 is the settlement agreement which was signed the same time that the labor agreement was signed which the company and the union agreed to dispose of replacement insurance policy through the procedures of the NLRB and the Federal courts, that it would remain in effect until there was final disposition made.

Q. Was general counsel's exhibit number 27 signed by the parties at the final negotiating session?

A. Yes, it was.

Q. Now general counsel's exhibit number 28. Can you tell us what it is?

A. Yes.

Q. This is a notice that was posted on the bulletin board on August 11th, explaining the procedure, the procedure brought about by the change and the section of the contract having to do with the union security clause. We formerly had had a union shop provision and the agreement finally reached on July 17th we settled on a maintenance of mem-

bership provision. This led to some confusion on the part of employees in the plant [79] who came to work immediately following the strike; they didn't understand quite what this meant so the employees who had been working and had the benefit of having it explained to them, in order to clarify this provision so that everybody understood what they could do or not do or were free to do, this notice was written by myself and posted on the bulletin board.

Q. What is the attachment?

A. The attachment is a two-part card which an employee could fill out, date and sign their name and clock number and serve one part on the union and the other part on the company, as a notice tendering resignation from the union under the escape clause which was provided in the contract.

Q. These cards were distributed to the employees?

A. These cards were not distributed to the employees.

Q. Tell me what were done with the cards?

A. This notice "Those wishing to resign during this escape period must notify the union and the company in writing. This may be done by simply completing a notice of resignation card which may be obtained from your foreman or operation manager." A supply of these cards, together with a supply of union membership cards were available in equal stacks side by side on the foreman and operation manager's desk during the escape period.

Q. When were the cards first made available to the employees?

[80] A. When were they first made available? I think I would have to say at the time of this notice.

Q. Was the maintenance of membership clause explained to the employees previously?

A. It had been explained to those who were in working prior to the end of the strike, when we explained what the changes were being made in the contract.

Q. When were the cards made available?

A. To the best of my recollection, not until August 11th.

Q. General counsel's exhibit number 29. What is it?

A. This is a list of the employees who have been permanently replaced, as made up from our personnel record cards on June 26th.

Q. What is general counsel's exhibit number 30?

A. General counsel's exhibit number 30 is also a list of those permanently replaced, a list which has some revisions in it as a result of our having checked our records against actual replacements.

Q. What date is it as of?

A. July 6th.

Q. How about general counsel's exhibit 31.

A. Exhibit 31 is a list dated April 18th and—

*Mr. Wayman*: That's August, I think.

*The Witness*: I am sorry, August 18th, and as far as I know is the same as the list of July 6th.

[81] Q. (*By Mr. Fleischut*) Are there changes between general counsel's exhibit 29, 30 and 31?

A. I would say there are changes between exhibit 29 and exhibit 30, as I have already explained. The union in our settlement agreement asked about any corrections to the list, if there were people on the list who had been put on there through error in posting, or whether somebody had been left off that

should have been put on, and any corrections, if the corrections would be made, and we assured them the corrections would be made and I believe the list in exhibit 30 and 31 reflect any revisions or changes as a result of that.

Q. Was there confusion in the identification of who had been replaced?

A. I would say with a half a dozen people, yes, but with the majority, no.

Q. And that was straightened out by general counsel's exhibit number 30, is that correct, and 31?

A. Yes.

Q. Was it a difficult thing to compile, this list of replacements, replaced employees?

A. No, it was not difficult.

Q. Do you know the approximate number of replaced employees that appear on the list of the 26th?

*Mr. Wayman*: I suppose we could all count them, probably, if it is information you are seeking.

[82] *Mr. Fleischut*: If you know.

*The Witness*: I don't know.

*Mr. Wayman*: If he is trying to impeach his own witness, I don't think he should.

Q. (*By Mr. Fleischut*) When was that list that is general counsel's exhibit 29 presented to you?

A. On the 26th.

Q. Do you remember if that was in the afternoon or the morning?

A. I don't remember whether it was afternoon or morning. It was the 26th.

Q. Do you recall the number of replacements, other than the number that appears on that list, being given to the union on that day?

A. On that day?

Q. Yes.

A. No.

Q. General counsel's exhibit number 32. This is a long column affair. Will you explain it, identifying it column by column?

A. This is a list of the replacements in alphabetical order.

Q. Is that column one?

A. Column one.

Q. All right, and what is column two. Explain each of these columns on there.

[83] A. The column headed job number is the job number the employee held as of March 31, 1959, and the department number is the number in which he worked, the placement; it gives the name of the employee, of the replacement who replaced the employee and column one and the job number on which replacement replaced employee, and column one, that is. The last, the right hand column is the date of the replacement, the date on which the replacement occurred.

Q. The paper titled, the last column, date of placement, is that incorrect? Shouldn't there be an r-e in front of placement?

A. Just semantics.

Q. Is there another column on that page? I direct your attention to the area between the first column of the employees name and the job number.

A. There is another column but it is difficult to read. The column between the replaced employee in col-

umn one and the job number column on which I noted the date the employee applied for renistatement.

Q. Explain the symbols that appear in that column opposite each name. Where there are numbers, what does that represent?

A. The numbers represent the date they applied for reinstatement.

Q. What does the indication NT mean?

A. "N" means they did not reapply, in the first case here, [84] and the "T" indicates the employee was terminated on August 20th.

Q. Some of the other columns, I note there is an "N".

A. That means they did not apply.

Q. I also note the column to the right of the one listing the name of the replacement, and some symbols, "Y", "NH", "LO", "Y", and so forth. What do they mean?

A. "NH" means this replacement was a hire hire, "LO" means this was a replacement by a former employee who had been on layoff, and "Y" simply means were they still working as of the time this list was made up. "Y" meant yes.

Q. I see a number opposite a name there. What does that mean?

*Mr. Wayman*: I can't hear that at all.

Q. (*By Mr. Fleischut*) On Page two there is a number opposite Mr. Burkhart's name, about half way down the page, 188. What does that number indicate?

A. It would indicate at the time we checked this—when we rechecked this, Mr. Burkhart was no longer on job 589 but was on job 188.

Q. So the numbers next to the replacement name indicate a new job number, is that correct?

A. Yes.

Q. Before the name of the replacement I notice "X" and "O". What do they mean?

[85] A. I honestly don't know. Those are somebody else's hieroglyphics. I don't know.

Q. Do you have anything with you which would give you an opportunity to refresh your recollection on that matter? You can't interpret that?

*Mr. Fleischut*: May I solicit a stipulation as to what they mean?

*Mr. Wayman*: Since I don't know either it would be very dangerous for me to stipulate. Let me inquire.

*Trial Examiner*: All right, go ahead.

*Mr. Murphy*: We will offer to stipulate, Mr. Trial Examiner, the "X" and "O" deal with where the personnel files for these people were as of Thursday of last week. Since, long since the strike, there has been a decentralized personnel program. Some files are now in the main personnel office and some files are in the south plant, and I asked that all of these files be collected together, and that is what "X" and "O" meant, where they were.

*Mr. Fleischut*: Thank you.

Q. (*By Mr. Fleischut*) Referring to this same general counsel's exhibit, what is the date of the compilation of that list?

A. How is that?

Q. What is the date of the compilation of this list?

*Mr. Wayman*: Do you have the exhibit it refers to?

[86] *The Witness*: That is exhibit 32—

*Mr. Wayman*: It appears to me you don't have the exhibit, Mr. Ferrell, or do you?

*The Witness*: We do.

*Mr. Wayman*: I thought perhaps we took it away when we were explaining the "X's" and "O's".

*The Witness*: The date is on the subpoena, item 32.

*Mr. Wayman*: There is no date on the subpoena, Mr. Ferrell.

*The Witness*: There is no date indicated on the list?

*Mr. Wayman*: Since we are being rather informal, will you tell us as nearly as you can, when it was prepared?

*Mr. Fleischut*: I may have an original copy of that with me.

*Mr. Wayman*: I think it would perhaps clarify the record a little bit; if I understand this correctly, Mr. Fleischut, this was a list prepared at the request of the Board in process of the investigation, is that true?

*Mr. Fleischut*: Mr. Ferrell would know better than I.

*Mr. Wayman*: Is that true?

*The Witness*: That's right, and why there is no one date on that, this thing grew and grew as the Board required more information and columns were added.

*Mr. Fleischut*: I have a copy indicating August 18th. Could that be the right date, to you?

[87] *The Witness*: Something like that.

*Mr. Wayman*: May I inquire as to whether the witness answered the last question?

*Trial Examiner*: You mean about the date?

*Mr. Wayman*: Yes. Was August 18th about the correct date?

*The Witness*: I would say this was approximately the date the list was in existence, yes. That's all I could say.

Q. (*By Mr. Fleischut*) Have there been changes since that time?

A. Not—

Q. Let me rephrase the question. Have other employees asked for reinstatement since that time?

A. They may have. I can't say positively yes or no.

Q. With reference to general counsel's exhibit 33. What is it?

A. It is a list of the temporary employees that were hired during the strike.

Q. What was the disposition of these employees at the end of the strike?

A. These employees were all laid off at the end of the strike.

Q. I see several columns on the list. The first column on the left is the name, is that correct?

A. Correct.

[88] Q. And what do the other markings indicate?
A. Date they started to work and date they were terminated.
Q. The request for reinstatement, general counsel's exhibit number 32, those were individual requests were they, I mean the individual employee actually came to the employment office and asked for his job?
A. Yes.
Q. I show you a document marked general counsel's exhibit number 35 for identification, and ask you if you can identify it.

(Thereupon, a document was marked general counsel's exhibit 35, for identification.)

*Mr. Wayman*: Did you answer the question, Mr. Ferrell?

*The Witness*: No, I didn't.

*Mr. Wayman*: I think the record should show I am now examining the document. This evidently was prepared in response to the union's request of just exactly how people would be recalled to work following the settlement of the strike, and how they would fit in with the people who were working and had superseniority.

*Mr. Fleischut*: Yes.

Q. (*By Mr. Fleischut*) It was prepared by who?
A. To the best of my recollection, it was prepared by the company.
Q. And what date was it presented to the union?
[89] A. This I do not know.

Q. Does the date of May 28th appear to be correct?

A. It could have been because on that date we discussed this twenty year superseniority, and they asked this question and we made this response.

Q. It was prepared by the company and given to the union in the course of negotiations?

A. Yes.

*Mr. Fleischut:* I offer into evidence General Counsel's Exhibit 35.

*Trial Examiner:* Any objection?

*Mr. Wayman:* No objection.

*Trial Examiner:* All right, the document may be received in evidence, and marked general counsel exhibit 35.

(The document heretofore marked general counsel's exhibit 35, for identification, was received in evidence.)

*Mr. Wayman:* May I request an opportunity to make a copy of the exhibit, because this is evidently the paper we weren't able to find.

*Trial Examiner:* All right, you are authorized to take the exhibit for the purpose of having copies made of it.

*Mr. Fleischut:* Exhibit 35.

Q. (*By Mr. Fleischut*) I show you a document marked general counsel's exhibit number 36 for identification, and ask if you can identify this.

[90] (Thereupon, a document was marked general counsel's exhibit 36, for identification.)

Q. (*By Mr. Fleischut*) Can you identify it?
A. Yes, this was a letter addressed to me by Mr. Bordonaro of local 613, dated December 30th, which I received.

*Mr. Fleischut:* I offer it into evidence.

*Mr. Wayman:* This is objected to, if the Trial Examiner please. I have seen this paper before and I can't imagine what the possible relevancy is that it could have.

*Trial Examiner:* What is the date of the letter?

*Mr. Wayman:* December 30, 1959.

*Trial Examiner:* Is this part of the chronology of the case?

*Mr. Fleischut:* Part of the unconditional request for reinstatement.

*Trial Examiner*: I will over rule your objection, and receive the letter in evidence.

(The document heretofore marked general counsel's exhibit 36, for identification, was received in evidence.)

Q. (*By Mr. Fleischut*) General counsel's exhibit 36, makes reference to a telephone conversation. Do you recall such a conversation? Excuse me. A conversation.
A. I don't recall such a conversation.
Q. You don't recall the conversation?
A. No, sir.
[91] Q. Was the company's policy announced — strike that. Was it the company's announced policy at the

conclusion of the strike that the strikers would be recalled as they were needed?

A. As they were needed, when the production line started back up in full production, and as much as possible in accordance with seniority.

Q. And was it announced that the strikers were not to report to the jobs until they were called back?

A. Yes.

Q. It was a don't-call-us we-will-call-you type of thing, is that correct?

A. That's right.

Q. Now when did your 1959 contract with the union expire?

A. March 31, 1960.

Q. I was referring to the spring of '59.

A. March 31, 1959.

Q. And did a strike occur at that time?

A. Yes, it did.

Q. And have there been negotiations previous to the commencement of that strike?

A. Yes, there had.

Q. When did the negotiations start? Can you refer to general counsel's exhibit number 2? You may, if you like.

A. January 10—no, wait a minute. February 10, 1959.

[92] Q. And when, during the course of the strike, was the question of superseniority injected into the discussions?

A. When during the course of the strike?

Q. Yes. During the negotiations.

A. Prior to the strike?

Q. No, sir, after the strike began.

A. Yes, sir, we discussed superseniority, as I previously stated. We said, first of all, on May 11th there would have to be some kind of a right, a way, to implement our promise to these people, that they would have employment security to the extent they would not be laid off as a result of the settlement of the strike. We did not talk about superseniority, as the twenty years superseniority, until May 28th.

Q. I see in answer to my question you are making reference to what appears to be a chart. May I examine it?

A. Yes.

Q. Is this chart something you have drawn up yourself?

A. Yes.

Q. Where is the information gathered from, from which you made that chart?

A. My negotiation notes.

Q. These were your own personal notes?

A. Yes.

Q. What do you recall saying as of the 11th of March — strike [93] that. The 11th of May, 1959, regarding the superseniority.

A. Simply that the company had given assurance to these people who came to work, anyone who came to work during the strike, under strike conditions, that they would not be laid off, fired, lose their job because of the settlement of the strike. We knew because of the number of people on lay off and in light of the business which we had estimated, projected, that this was going to require some sort of seniority, additional seniority, which would give these people the job assurance which we felt we had

the right to offer them, as permanent replacements. Otherwise, they wouldn't be permanent.

Q. Exactly what was it that you told these employees, that is these replacement employees?

A. What did we tell them?

Q. Yes.

A. We told them only that they would not lose their jobs as a result of the settlement of the strike.

Q. Did you not elaborate upon that?

A. We did not say "You will have an additional twenty years," no.

Q. Or any other for of accelerated or superseniority?

A. No, because we didn't know in the beginning how we were going to resolve this problem.

Q. It is correct you did not make statements concerning accelerated or superseniority to the employees, is that correct?

[94] A. I would say that is correct.

Q. Now I ask you what you said to the union in negotiations on the 11th?

*Trail Examiner*: Haven't you been over this about four or five times?

*Mr. Fleischut*: I want you to address yourself to what you recall you said. If you gave any reason, that's all right with me, but state exactly what you recall saying to them. If you have notes I don't mind if you look at them.

*The Witness*: We told the union we would have to arrive at some kind of a seniority agreement, granting superseniority rights to all strikers who had returned to work prior to the end of the strike.

Q. (*By Mr. Fleischut*) This is a typewritten sheet?

A. I have the handwritten notes, if you want them.

Q. I would like to—where does the date appear on this sheet?

A. Right there.

*Mr. Wayman*: I am sure that's a very pleasant conversation but I can't hear it.

*Mr. Fleischut*: Let the record indicate I am examining Mr. Ferrell's notes of May 11th.

*Mr. Wayman*: He appears to be pointing at something and I am sure you are saying something, but I just can't hear it.

Q. (*By Mr. Fleischut*) I would like to offer into evidence [95] your handwritten notes of that date, what you have identified, Mr. Ferrell.

*Mr. Wayman*: Now, I am going to object to that. In the first place, I don't think it is proper to offer handwritten notes in evidence whenever the witness is here to testify. He has been permitted by his own counsel, which was generous, to refer to his notes with which to refresh his recollection, which is all right, but I think he ought to testify rather than offer his notes.

*Trial Examiner*: Actually, I don't know if the record shows the result of the examination of the longhand notes any how. The question arose whether or not the witness made longhand notes about informing the union negotiation committee about superseniority for returning strikers, and the witness then obtained his original notes, and I assume the original notes back up his statement.

*Mr. Fleischut*: They so would, if put into evidence. Perhaps counsel would rather let him read that portion into the record and we may stipulate that is what his notes say.

*Mr. Wayman*: The witness testified—

*Trial Examiner*: I don't know. You pull this out and roll it around and wrap it up in so many different ways.

*Mr. Wayman*: I think it is in there about four times.

*Trial Examiner*: At least four times. You roll it and scrape it and stretch it out and turn it over but it all [96] comes out the same.

Q. (*By Mr. Fleischut*) Let me ask the witness to read into the record his notes regarding superseniority on that date.

A. My note on May 11th negotiation session with the union says "seniority agreement granting superseniority rights to all strikers who returned to work prior to the end of the strike."

Q. Did you indicate on that date adamancy or lack of adamancy in making this proposal?

*Mr. Wayman*: Do you understand that question?

*The Witness*: Yes, I understand it. We said there had to be some way to take care of this problem. I don't think there was any question about us being positive in our statement. To say we were adamant, no.

Q. (*By Mr. Fleischut*) Were you willing to bargain this away, superseniority for strikers?

*Mr. Wayman*: This is the difficulty in not objecting to some of the previous questions.

*Trial Examiner*: This is a very peculiar way of testing good faith in bargaining. I don't think it is a fair question.

Q. (*By Mr. Fleischut*) Did you state whether or not you were willing to bargain away this point?

*Trial Examiner*: I don't think you have changed the substance of it at all. Did you tell them you were willing [97] to bargain on it?

*The Witness*: We were perfectly willing to explore any possible way of implementing this and that we were not insisting on superseniority per se. We would be glad to talk about any other method of accomplishing the same end.

*Trial Examiner*: I suppose the best way to get around it was when you made that statement to the union negotiating committee, what did they say?

*The Witness*: Excuse me.

*Mr. Fleischut*: Let the record indicate the witness is referring to his notes, his handwritten notes —his typewritten notes of May 11, 1959.

*The Witness*: It is easier to find. I have no note of any response by the union at that time.

Q. (*By Mr. Fleischut*) Mr. Ferrell, have you on previous occasions, under oath, made statements concerning the subject of this case?

A. Yes.

Q. Specifically you have given affidavits, is that correct?
A. That is correct.
Q. To whom were the affidavits given?
A. To Elmer Hope, field examiner, for the National Labor Relations Board.
Q. Do you recall how many affidavits you give Mr. Hope?
A. Three, I think.
[98] Q. Would four refresh your recollection?
A. I only recall three.
Q. Would you describe for me the circumstances under which the affidavits were given? Where were you, where was Mr. Hope, who was present and who wrote what down, and so forth, in a narrative form?
A. Yes, these were written down, narrated, in Mr. Murphy's office.
Q. Who is Mr. Murphy?
A. Mr. Murphy is general counsel for the company.
Q. All right, and who was present?
A. Mr. Murphy and Mr. Hope and myself.
Q. Stenographer?
A. Stenographer.
Q. Who dictated the affidavit?
A. Mr. Murphy.
Q. And where did Mr. Murphy get the information that he dictated?
A. From me and from the record.
Q. In other words, you said—you gave the information, and Mr. Murphy phrased it, is that correct?
A. That's correct.
Q. The stenographer then typed the information up?
A. Yes, she did.

Q. In affidavit form?

[99] A. Yes.

Q. Do you know if Mr. Murphy reviewed the affidavits before you signed them?

A. We both did.

Q. Both of you, is that correct?

A. Yes, sir.

Q. And you read them before you signed them?

A. More than once.

Q. Then you swore to them before Mr. Hope, is that correct?

A. That is correct.

Q. Was it the same day that you gave the affidavit that you swore to it and gave it to Mr. Hope?

A. No, I believe he came back, at least in one case, the following day—over a week end—he came back and got it.

Q. And the information you gave in these affidavits, was it true? Was all of the information contained in the affidavits truthful?

A. Certainly.

Q. And it is still truthful today?

A. Yes.

Q. Now if you will bear with me for one moment, I want to show the affidavits to the witness.

* * * * * * *

[103] Q. (*By Mr. Fleischut*) Mr. Ferrell, on the 11th what type of accelerated seniority was advocated by the company, May 11th? What form was it to take?

*Mr. Wayman*: Accelerated, did you say?

*The Witness*: We said it had to be some kind of superseniority. We didn't know what form it was going to take.

Q. (*By Mr. Fleischut*) When was the next negotiation session?

A. Following the 11th?

Q. That's correct.

A. May 13th.

Q. What did you say on that occasion about superseniority?

*Mr. Wayman*: If I were to ask that question, I am pretty sure there would be an objection. I don't know if he said anything about seniority.

Q. (*By Mr. Fleischut*) What, if anything, did you say? Mr. Ferrell, I don't object to your using your affidavit. I assume you have copies of it.

*Mr. Wayman*: We have a c and I will make it available to Mr. Ferrell, if it is all right. I am not exactly sure what procedure I am following, but whatever it is, I just handed him his affidavit.

Q. (*By Mr. Fleischut*) I am referring to the last paragraph on page 9 of your first affidavit. What, if anything, was [104] said at the negotiation session on May 13th regarding superseniority?

A. This was seniority based on being equal to the senior employee in the department where the replacement found himself.

Q. That was a company proposal?

A. A departmental type of superseniority.

Q. That was a company proposal? Was that a company proposal?

A. Yes.

Q. When did the next negotiating session take place?

A. April 14th—I am sorry.

Q. Was that a full committee meeting?

A. I am sorry. Wait a minute. Let's start over again.

Q. I mean May.

A. Talking about the 11th and 13th and the next was on the 14th?

Q. What type of a meeting was held on the 14th?

A. Well, there were two meetings on the 14th.

Q. What type of meetings were they?

A. One meeting in the morning with the regular committees, and a side-bar session in the afternoon.

Q. Was the problem of superseniority discussed at either of these? I am still at the bottom of page nine of your first affidavit, Mr. Ferrell.

A. We were talking about the superseniority.

[105] Q. What is a side-bar conference?

A. Side-bar conference was a session between members of the company negotiating team and the union negotiating team without the full committees. It was an abbreviated committee session.

Q. Were there any special rules and regulations which were applied to the special side-bar meetings?

A. No, except they were, for the most part, informal discussions, exploratory type of discussions to see where we could go from there, where we might proceed to try and reach agreement.

Q. Now with reference to the 14th at which meetings were superseniority discussed at?

A. Pardon?

Q. Which meeting on the 14th, the full committee meeting, or the side-bar conference, or neither, on the 14th?

A. You say was this discussed at these meetings?

Q. Yes.
A. Yes, I would say it was.
Q. When was the next negotiating session after the 14th?
A. The next one was on the 18th.
Q. Did you have a side-bar conference on the 15th?
A. Yes, we did but I made no record of that meeting.
Q. Do you have any independent recollection of what was discussed at that meeting?
A. No, it was just merged in with the rest of it now
Q. On the 18th was the matter of superseniority discussed?
[106] A. On the 18th, you ask?
Q. Yes, that's correct.
A. I do not have any recorded notes of the meeting of the 18th.
Q. When was the next meeting held?
A. The 22nd.
Q. Was superseniority discussed at that meeting?
A. We were still talking about equal seniority in the department.
Q. That would be a form of superseniority?
A. Yes.
Q. When was the next negotiating session held?
A. On the 23rd.
Q. Was the subject of superseniority discussed at that time? I am still on your affidavit on page nine, the last paragraph, sir, if that is any help to you.
A. We did on the 23rd, except on the 23rd the discussion was more around who had been replaced, and what was going to happen to these people who had been replaced. So there was this discusssion.

Q. On the 23rd did you make any statements concerning the bargain ability of this issue? Bottom of page nine again.

A. Yes, the same thing as I said before, we took a positive position we were going to have to have some sort of protection for these people in the way of giving them a job assurance, and that we told them they would have.

[107] Q. Did you make any statement about making concessions?

A. Yes, we said we would be willing to bargain on what form this job assurance would take—we were all the way through.

Q. Did you indicate whether or not you would bargain it away entirely?

A. Not the job assurance.

Q. I don't think that's—

A. We said we didn't care what form it took. We were willing to bargain on the method to be used to implement it.

Q. Is it correct on that date you said you would have to have some form of superseniority?

A. Yes, some way to take care of this problem.

Q. On the 23rd were any requests made of you for information? Top of page ten.

A. Yes.

*Mr. Wayman*: This is objected to because of the technical word information.

*Trial Examiner*: May be that is preliminary. Go ahead.

Q. (*By Mr. Fleischut*) On the 23rd of May did the union request the names of all employees who had been replaced?

A. Yes, they asked us who had been permanently replaced.

Q. Did you provide them with that information?

A. No, we did not.

Q. When did you refuse to provide them with that information?

*Mr. Wamyan*: This is objected to again, as to form. I think if he would ask the witness what did he say about [108] it perhaps that would take care of it.

Q. (*By Mr. Fleischut*) What did you say concerning the request for this information?

A. On the 23rd?

Q. On the 23rd.

A. On the 23rd we gave the union the number of employees but we did not give them names. We told them we would give them a further answer at the next session.

Q. When was the next negotiating session held?

A. That was on the 28th.

Q. What did you do regarding this superseniority policy between the 23rd and 28th, if anything?

A. I think the record will show that we reduced it to writing.

Q. An exhibit which is already in the record, is that correct?

A Right.

Q. On the 28th is when you announced that procedure, is that correct?

A. We did not announce it on the 28th, no, sir.

Q. What did you do on the 28th with regard to general counsel's exhibit number 12, that is the replacement policy and procedure dated 5 27.

A. What did we do with it?

Q. Yes.

A. This was given to our operation managers, our general managers—

[109] Q. No, what did you do with it at the bargaining session on the 28th?

A. The bargaining session on the 28th. Oh. The union first asked us if we had the list of replacements.

Q. Please respond to my question and I will get to that. You previously offered this testimony about what you did with this policy dated the 27th on the 28th.

*Mr. Wayman*: I think he has too.

*Trial Examiner*: He has already stated it three times. Once when the exhibit was identified, and twice when you went over all of the exhibits the second time. I thought you had something you wanted to point out to the witness in connection with his affidavits.

Q. (*By Mr. Fleischut*) On May 28th did anything occur with regard to the request for the names of the employees who had been replaced?

A. Yes, the company took the position they were under no obligation to give this information to the union.

Q. Did you give it to the union at that time?

A. No, we did not.

Q. When did the next negotiating session take place?

A. May 29th.

Q. Was there any discussion of superseniority at that time?

A. Yes, there was a discussion of it.

Q. That will be sufficient. When was the next negotiating [110] session?

A. On June 2nd.

Q. Was superseniority discussed at that time? Page eleven of your affidavit, the first full paragraph.

A. Yes.

Q. What was the company's position at that time?

A. I would like to turn to the affidavit here.

Q. Please.

A. We stated the company was not adamant as far as the twenty year plan was concerned. We pointed out we had presented two separate seniority proposals; the twenty year plan and the seniority equal to the most senior one in the department, as I have already mentioned, and as was mentioned at earlier meetings. Neither of these were acceptable to the union.

Q. When was the next negotiating meeting?

A. Wait just a minute.

Q. Pardon me.

*Mr. Wayman*: He hadn't quite finished his answer.

*The Witness*: There was a third thing which we mentioned at this meeting on the 28th, and this was the—I am sorry. After while I will get the date straight. Excuse me. We are talking about June 11th, is that right?

Q. (*By Mr. Fleischut*) The last full paragraph on page eleven of your affidavit you say you discussed this problem.

A. I am sorry. I want to be sure which meeting we are [111] talking about.

Q. June 11th.

A. Thank you. We suggested a further plan then on June the 11th.

Q. What was this further plan?

A. That the replacements enjoy the same seniority consideration as the union officers.

Q. What consideration was that?

A. This is that they have superseniority and the last to be laid off in their department from the plant.

Q. When was the next negotiating session?

A. June 11th? June 12.

Q. Was superseniority discussed at that session?

A. Yes.

Q. What was said concerning it?

A. At that time we said we would like to formulate the—an offer for the union's consideration, job assurance on the same basis as the union officers.

Q. I refer you now to page twelve of this affidavit. You state therein throughout the entire period, since May 7th, the company first sought permanent replacements, the company's only objective has been to find sufficient workers to produce its products and to assure the continued operation of its plants. Did you so state that?

A. This is true, yes.

[112] Q. We were discussing June 12th, I believe the last date, in issue. How many remaining issues were there to be decided in the contract negotiations?

A. On June 12th?

Q. Yes.
A. There were three.
Q. What were they?
A. They were discharges of five employees, the company's replacement program.
Q. By that you mean superseniority?
A. I mean some job assurance for the replacements that have been hired during the strike, be it superseniority or what it be.
Q. And that incorporated the problem of superseniority?
A. It was the problem of what to do about these replacements.
Q. What was the third issue?
A. The third issue was union security.
Q. What do you mean by union security?
A. This was the section of the contract involving union shop or maintenance of membership.
Q. Throughout the entire period did you meantain you could not retreat from some form of superseniority?
A. I object to superseniority per se, because my company said the company consistently evidenced its willingness to negotiate with the union as to the form the job assurance would [113] take. They had to do something about these—
Q. No, thank you. I can read this.

*Trial Examiner:* Of course, he wasn't reading it to you. He was reading it for the record.

Q. (*By Mr. Fleischut*) I direct your attention to June 12th. Did the company make any package proposals on that day?
A. Yes, we did.

Q. Do you recall the contents of that package proposal?
A. Yes.
Q. What were the contents of the package?
A. With regard to the discharges, we said the company was willing to give consideration on two of the discharged employees, Karpinski and Skiba. They would be reinstated after a ninety-day disciplinary lay off.
Q. How long was this offer to remain in effect?
A. This was—I am sorry. You asked me what the package was and I only told you one item in the package.
Q. Excuse me. Go on.
A. The other three discharges, Gilson, Buren and Grafius were to remain discharged. With reference to our replacement policy, we said the company was willing to drop its twenty year seniority plan and offer to give assurance to replacements on the same non-discriminatory basis as has been agreed to for union officers. With regard to union shop the company [114] would accept agreement on maintenance of membership which we had discussed and with respect to the length of contract said this would run from June 15th, 1959 to March 31, 1960. June 15th being the following Monday, and this being Friday on which we made this proposal.
Q. How long was this offer to remain available for the union to accept?
A. It was a day offer.
Q. Did the union request any information on June 12th?
A. The union again asked who had been replaced and whether there were any officers or stewards.

Q. Did you reply to that request?
A. The union did not expect an answer that day. They said they would like an answer after they had a chance to check back at the plant.
Q. When was the next session held?
A. June the 13th.
Q. The 13th?
A. Yes.
Q. Did you reply to the request of the 12th on the 13th?
A. No, sir, we did not.
Q. You said something concerning it, did you not?
A. Yes, we did.
Q. Did you give them the information?
A. No, we did not. Would you like to know what we did say?
[115] Q. Not particularly.

*Trial Examiner*: Well, he may answer it.

*The Witness*: You asked me.

*Trial Examiner*: We are not playing musical chairs here, although lots of times I think we are. Go ahead. You may answer.

*The Witness*: The company will disclose the names of the displaced employees when the individual presents himself for employment, or when the strike is settled, but otherwise we took the position we were not under obligation to give this information.

Q. (*By Mr. Fleischut*) When was the next negotiating session?
A. June the 16th.

Q. Didn't you have a session on the 15th? Page fifteen in your affidavit.
A. Just a minute. A side-bar conference—
Q. A side-bar conference that day?
A. Just a minute. This evidence was a side-bar one because I have no formal notes on it.
Q. Do you recall what was dsicussed at that meeting at all?
A. I can't say that I do, no, sir.
Q. When was the next session held?
A. On June 23rd. Wait a minute. I beg your pardon. The 16th.
[116] Q. Was superseniority discussed at that session?
A. We discussed the replacements, so whatever discussion in connection with the replacement policy took place in connection with the replacements.
Q. When was the next negotiating session?
A. The 23rd of June.
Q. The 23rd?
A. The 23rd.
Q. Was superseniority discussed at that session?
A. Yes, it was.
Q. Do you recall what was said?
A. Yes, we were told by Mr. Coyne that the membership had voted to continue the strike over the twenty year policy. The union also proposed at this meeting, that the NLRB decide the issue on the twenty year policy in an unfair labor practice charge filed by the union against the company.
Q. Were there any new proposals made on the 23rd concerning the form of superseniority?
A. Yes, the company suggested that these replacements might be treated much like our out of line job rates,

that they be considered as red circle employees the same as we had red circle job rates which were not in line with our job evaluation system which had been perpetuated when our job evaluation system was installed.

Q. Tell us more about how the red circle plan would work?

[117] A. Simply that these people would have preference as far as lay off was concerned, they would not be laid off as long as work was available that they could do.

Q. In other words, the replacements would be exempt from the ordinary seniority system, is that right?

A. That is right. They would not have simply seniority. They simply would be exempted from being laid off under the seniority provision of the contract.

Q. They would be in a separate category by themselves, is that correct?

A. That is what it would have had to be.

Q. This would be a preferred category over the ordinary seniority?

*Mr. Wayman*: That is objected to. I don't think the witness ought to have to make that conclusion. He has told how the system worked, and the Trial examiner may draw his own conclusions.

*Trial Examiner*: If you want to explain it further, you may.

*The Witness*: This was not given any serious consideration by the union and we did not explore it any further. We never got into details as to how it worked.

Q. (*By Mr. Fleischut*) When was the next negotiating session, Mr. Ferrell?

A. June the 24th.

[118] Q. Was superseniority discussed at that meeting?

A. Yes, it was. The company stated we would agree to dispose of the company's replacement job security plans through the channels of the National Labor Relations Board, and the courts without limiting the legal rights of either party to appeal to the ultimate source.

Q. Did anything significant take place on the 24th with regard to the existence of the strike?

A. Mr. Coyne proposed that the union return to work on the basis of some agreement, to abide by the disposition of our replacement policy through the NLRB and the courts.

Q. Let me ask you this question. When did the strike end?

A. The union abandoned the strike — this would be on the 25th of June. We received a telegram to that effect from Mr. Bordonaro to that effect.

Q. That is the telegram that is in evidence, is that correct?

A. Yes.

Q. There was an exchange of telegrams on the 25th, right?

A. Yes.

Q. All of which are in evidence.

A. Yes.

Q. Was there a negotiating session on the 25th?

A. A negotiating session?

Q. Yes.
A. No, sir.
[119] Q. When was the next meeting?
A. What kind of a meeting?
Q. Negotiating meeting. Were there any other types of meetings?
A. There was a meeting on the 26th at which time Mr. Bordonaro and I believe Mr. Collela sat down with Mr. Bertone and went over the replacement list which we got together at the union's request.
Q. Was there any negotiating at that session?
A. No.
Q. When was the next negotiating session?
A. The next on was on July 7th.
Q. Was superseniority discussed at that meeting?
A. Yes, it was.
Q. It was discussed?
A. It was discussed in the form of discussion about the replacements, not superseniority per se.
Q. On the 7th did you talk about red circle rates, twenty years of seniority equal to the officers and stewards of the union?
A. The 27th?
Q. Yes. A little paragraph on page twenty of your affidavit.
A. I would not say that we discussed twenty year or red circle as a proposal on that date. No.
Q. You didn't discuss the matters on that date?
[120] A. If you are looking at my affidavit it says we had stated grant additional seniority whether it be red circle, twenty years or similar to union officers. Had. Past tense. Not that we did it at this meeting.

Q. Did you or did you not discuss it on that date?

A. We discussed how employees had been replaced. We explained that the least seniority — the least senior person or employee on the job classification needed would be replaced first, and then the union asked the question what happened if an employee had already been replaced and we said they would then fill out a statement of availability and they would then be placed on an opening for which they were qualified.

Q. Do your notes indicate whether or not you discussed superseniority on that date?

A. Yes, Mr. Collela asked if we signed a contract on that date and we agree the company discontinue its policy as of April 1, 1960.

Q. It was discussed?

A. It was discussed.

Q. When was the next negotiating session held?

A. On July 8th.

Q. Was superseniority discussed at that time?

A. Yes, it was.

Q. Did you recall what was said about it?

A. Yes, Mr. Collela asked what the status of his officers and [121] stewards were as to the superseniority once the contract was signed. We said the superseniority given union officers and stewards applied only to those who were employees of the company. Mr. Collela said he understood once a contract was signed the stewards and officers would all return to their jobs.

Q. That's not the same type of seniority as the strike replacements, is it?

A. I beg your pardon?

Q. Superseniority for officers and stewards is not covered in the contract?

A. Yes, it is.

Q. Sections 18 and 19?

A. Yes.

Q. That is a different subject for superseniority, for strike replacements?

A. No, it is exactly the same subject.

Q. Did you discuss superseniority for strike replacements on the 8th?

A. I don't have any specific note that we did. I am sure we talked about it because we were talking about it in connection with replacements, and in connection with officers and stewards.

Q. Did you make a one-day proposal on the 7th, the day before that?

A. We made a proposal in connection with the discharges. Our [122] position was this, that even though all four cases had been turned down by the NLRB, we were willing to make one final effort to clear this issue from the table, with no dangling ends or strings attached. We wanted it clearly understood if this offer was not accepted we would withdraw it and maintain a firm position that all five discharges be made permanent.

Q. How long was the offer to remain open?

A. This was a one-day offer, which we said for this reason, the union should take time and give serious consideration to the proposal before giving the company's its reply, and in this offer we agreed to reinstate Skiba and Karpinski with a thirty day disciplinary lay off, beginning June 29th but there was

to be no further discussions on the case of Grafius, Buren and Gilson.

Q. What do you mean by a one-day offer? The same day or to be open to the following day?

A. It was good for the duration of this meeting, this day.

Q. But the other one-day offer of the June 12th — how long was that to be available?

A. One day, June 12th.

Q. The same day or until the following day?

A. The same day.

Q. Now we talk about superseniority. Would you explain to us what category of employees were to be granted super- [123] seniority?

*Mr. Wayman*: I think, if the Trial Examiner please, this is in the record in the form of a document that has been authenticated two or three times, and I don't think there is any argument about it. It is the general counsel's exhibit 12.

*Mr. Fleischut*: There are various categories of employees and I think it would be well for him to explain exactly what he means.

*Trial Examiner*: There is much of this that I don't follow your purpose. It is more of an investigation than a hearing. Can you reframe it? I actually don't follow you on this question. Explain what employees it did apply to?

Q. (*By Mr. Fleischut*) What category of employees were to be given superseniority?

*Trial Examiner*: You have been going through all of these documents and talking about super-

seniority at a dozen meetings, and now you want to know who it applies to? Can you tell us who the employees were that superseniority was to apply to?

*The Witness*: So that I am accurate, I am just tangled up here. I would like to refer to that policy statement, if I may.

*Mr. Wayman*: That was exhibit 12, I believe.

*The Witness*: The twenty year job assurance plan applied [124] to all new hires, to all rehires, and all returned employees.

Q. (*By Mr. Fleischut*) Did it apply to all of the employees who worked continuously throughout the strike, from beginning to end?

A. All employees who worked throughout the strike who were bargaining unit employees, or worked on bargaining unit employees jobs. What I am trying to say is it did not apply to salary or clerical employees who may have worked on production jobs during the strike. I want to make that clear.

Q. It applied to strikers who abandoned the strike and returned to work, is that correct?

A. Yes, it did.

Q. Now with regard to your third affidavit, page two entitled "Second supplemental affidavit", which is the third one.

A. The third supplemental affidavit?

Q. Entitled second supplemental affidavit.

A. All right, I have it.

Q. On the second page of that affidavit, Mr. Ferrell, I refer you to the eighth line stating "Employees had merely been informed at the time they would be

given sufficient job assurance that their jobs would not be terminated at the end of the strike."

A. This is so. This is employees who returned to work or went to work during the strike.

Q. Employees who returned to work or went to work during the [125] strike, is that correct?

A. Yes, and this is new hires as well.

Q. Did the company ever make known to the public the superseniority proposal?

*Mr. Wayman*: I think I should object to that.

*Trial Examiner*: I will sustain that.

*Mr. Wayman*: What difference does it make?

*Mr. Fleischut*: It makes every difference in the world.

*Trial Examiner*: Don't argue. I have ruled. If you want to put it a different way —

Q. (*By Mr. Fleischut*) When did the public first know about the superseniority policy?

*Trial Examiner*: I will sustain my own objection to that.

Q. (*By Mr. Fleischut*) Was the public ever informed of the superseniority policy?

*Trial Examiner*: What does the public have to do with this?

*Mr. Fleischut*: The public has to do with prospective replacements.

*Trial Examiner*: Now you are getting into another field.

Q. (*By Mr. Fleischut*) Were prospective replacements ever informed of the superseniority policy?

A. The union broadcast our twenty year superseniority policy over the television station.

Q. When did they do that? When was that?

A. This was done over the week of May 30th and 31st, when Mr. [126] Coyne appeared on the local television station.

Q. Mr. who?

A. Mr. Coyne, Roger Coyne, the international representative of the IUE.

Q. Up until that time had the company done anything to publicize it to the prospective replacements?

A. No.

Q. Now we refer you to paragraph number five at the bottom of page two, the statement, following determination of Erie Resistor to resume production and the hiring of replacements, our personnel office received approximately three hundred applications for employment. Had the company desired to break the strike, it could have replaced all of its striking employees. With approximately ten thousand people unemployed in the Erie labor area, there would have been no difficulty finding sufficient employees. However the company purposely proceeded slowly in its replacement program so as to preserve, if possible, a continuity of employment. Did you make such a statement?

A. Yes, I did.

* * * * * * *

[127] Q. (*By Mr. Fleischut*) Will you refer to your final affidavit, Mr. Ferrell, the third supplemental affidavit? Do you have that, sir?

A. Yes, sir.

Q. Page two. Employees who applied for work and were hired as replacements were told if they were hired their job would not end as a result of the termination of the strike. They were not told what type of seniority would be used to assure that continuation of their jobs. According to the records of the company, the first replacements were hired on May 11, 1959, and thereafter—excuse me—therefore replacements hired that day would have been the first to have been notified their jobs would not end—yes, their jobs would not end with the termination of the strike. The first time replacements were notified of the twenty year plan, aside from the letter of June 10th, above, was on June 15, 1959, when the policy dated May 27th was first posted. As set forth in my previous affidavit the draft of May 27th was never distributed except to top management nor posted prior to the 15th of June. When it was posted on June 15th there was also posted a supplement to it which stated the company had offered the union a substitute for the twenty year, the same seniority enjoyed by the officers and stewards and such a substituted plan [128] would be put in effect agreeable to the union and further no substituted plan being negotiated the twenty year plan would continue. Did you make such a statement?

*Mr. Wayman*: I suppose a lawyer should actually keep quiet when he hears a question like that asked on direct examination. However, I find it difficult to do so. I want the witness to answer the question, if he can. I am not objecting.

*The Witness*: The statement is concerning our policy statement, which was made in writing.

Q. (*By Mr. Fleischut*) Your answer is what?

A. Yes, it was made in writing in answer to the policy on June 15th. On June 15th the amendment to our policy of May 27th, such a statement was incorporated, yes.

Q. What I am referring to did you make such a statement in an affidavit?

A. This affidavit?

Q. Yes.

A. Yes, in substance at least.

Q. Mr. Ferrell, were you able to tell at any given time which employees had been replaced?

A. Yes, sir, we were—yes, sir, we could.

Q. Mr. Ferrell, with reference to those employees of—strike that. Did the company refuse to reinstate those strikers who had been replaced?

*Mr. Wayman*: This is objected to as calling for a [129] conclusion. I think the witness ought not to be called upon to characterize what the company did. Let him tell what happened. He will do it. He has answered all of these question as directly and factually as he possibly could.

Q. (*By Mr. Fleischut*) What did the company do with regard to the employees who had been replaced and who applied for reinstatement?

A. We accepted their application for instatement. We did not put them back to work because we considered them as permanently replaced.

Q. Do you presently have in force a superseniority policy?

A. Yes, we do.

Q. Arising out of the strike?

A. Yes, we do.

Q. Have you had it at all times since the end of the strike?

A. Yes, we have.

Q. Since the conclusion of the strike have employees been laid off who but for the superseniority would not have been laid off?

A. Yes.

Q. Since the end of the strike have employees made lesser earnings or been assigned lesser paying jobs as a result of the superseniority policy?

A. I do not know that.

Q. Pardon me?

[130] A. I can't answer that. I don't know.

Q. Would a search of your personnel records give you such an answer?

A. With a lot of assumptions, it would, yes, but you would have to make a lot of assumptions.

* * * * * * *

[133] CROSS EXAMINATION

Q. (*By Mr. Wayman*) Mr. Ferrell, I show you general counsel's exhibit number 35, and ask you whether or not you observe on there a number of pencil notations?

A. Yes, I do.

Q. And if I am not mistaken that exhibit proper consists of a hectograph or mimeograph statement, is that correct?

A. That is correct.

Q. Will you tell us whether or not the pencil notations were placed there by you or anybody from the company, so far as you know?

A. They were not so far as I know, and I think Mr. Fleischut will agree they have nothing to do with this proceeding.

*Mr. Fleischut*) No, only the hectograph material.

Q. (*By Mr. Wayman*) Referring now to general counsel's exhibit 36, what appears to be a letter from Mr. Bordonaro dated December 30, 1959, addressed to you. If my memory serves me correctly you were asked whether or not there was a telephone conversation concerning that letter?

A. Yes.

Q. You remember that?

A. Yes.

Q. Is there anything in that letter about any telephone conversation?

A. No, there is not.

[134] *Mr. Fleischut*: So as not to be misleading, Mr. Wayman, I corrected the telephone conversation, to

say conversation. Maybe you want to ask him if there was any conversation.

*Mr. Wayman*: I think the letter will speak for itself.

Q. (*By Mr. Wayman*) Looking now at general counsel's exhibit 28—I think you have most of them up there—this exhibit has attached to it a card which appears to be in two parts, is that right?

A. That's right.

Q. In your direct examination I believe you either told us or began to tell us how these cards were used. Will you tell me what you said how these cards were distributed to employees, if they were?

A. The cards were made available on the foreman's desks along with application for membership in the union, so that both were available whether an employee wanted to join, or whether an employee wanted to resign.

Q. Was the foreman given any instructions regarding the distribution of these cards?

A. Only that he was to give the employee a card if they asked for it, plus the notice he got from reading this on the bulletin board.

Q. Was he instructed to tell them which one to take?

A. No, sir.

Q. Was he instructed not to tell them which one to take?

[135] A. Yes, sir.

Q. Referring to general counsel's exhibit number 21 which is a list or compilation of telephone messages produced in answer to the subpoena, will you tell

us whether or not you received a substantial number of calls to this number 6-6221?

A. Yes, we did. We ran some checks on that, some counts, and we had calls running as high as a hundred and fifty calls an hour.

Q. Referring now to the several meetings in which the union asked you to give the names of the persons who had been replaced—I am sure you recall the questions regarding those meetings?

A. Yes.

Q. Did you tell the union why you felt you were under no obligation to supply these names?

A. Yes.

Q. What did you tell them?

A. We told them that on the basis of their position that all of these employees being reinstated, called back to work, on the basis of their regular seniority, that we on advice of counsel refused to give them the information.

Q. Did the union take a position throughout that all employees had to be reinstated?

A. Yes, they did.

Q. Including those who had been discharged?

A. Up until the final agreement, yes.

Q. Now you spoke of five employees who had been discharged. [136] What was the reason for their discharge?

A. One employee was discharged for spitting on an employee, a working employee. Another was discharged for chasing an employee down the street and pounding him on the back. Another one was discharged for—two more were discharged for direct assault, by striking employees and knocking

them down. One more was discharged for reaching into an automobile of an employee leaving the plant and striking him in the face.

Q. So that the five discharge cases had nothing whatsoever to do with the question of whether or not these employees were reinstated, is that true?

A. That's right. They were discharged, as far as we were concerned.

Q. They were not involved in the question or replacement?

A. That's correct.

* * * * * * *

Q. (*By Mr. Davidson*) Mr. Ferrell, was there any attempt to hire replacements before May 11th?

A. Before May 11th?

Q. Yes, before May 11th.

A. No, sir.

Q. Can you tell us how much seniority was required at the end of the strike to obtain—to be recalled to employment, to be reinstated?

A. At the end of the strike?

Q. That's right.

A. I believe that was in the record this morning of—

*Mr. Wayman:* That was at the beginning of the strike?

*The Witness:* Yes, that was his question.

*Mr. Davidson:* No, at the end of the strike.

*The Witness:* I am sorry. At the end of the strike. I would like to give you an accurate answer to your question, [138] Mr. Davidson.

Q. (*By Mr. Davidson*) I would like to have one.

A. I don't have that figure in mind.

Q. Can you give me within a year?
A. Well—
Q. How much seniority is required today?
A. This is a question of fact and not of opinion. I can get you the answer. I don't have it at this time.
Q. How much seniority is required today to retain employment in the plant?
A. I can give you that also but I don't have it right at this minute.
Q. You don't have either answer?
A. That's right.
Q. I would like the answer to both questions.
A. These are all a matter of fact again and I will be glad to get them for you.
Q. Yes. Now, one thing I wanted to clear up, if I may. On your direct examination you stated on June 15th the May 27th policy statement was posted together with the June 15th attachment. Was this the first time that the May 27th policy statement had been posted in the plant?
A. Yes, sir.
Q. I would like to call your attention to the negotiating meeting on May 23rd, May 23, 1959, which was a Saturday. I [139] would like to ask you if you recall that on that day you presented the union with specific information with respect to the composition of the work force then in the plant. Do you recall that?
A. This is on the 23rd, you say?
Q. On the 23rd of May, and I will for your assistance state what I mean by specific information, that is information as to numbers of people falling within certain seniority classifications and other numerical information pertaining to those replacement people.

A. I have no such information on May 23rd. I do find such information was given on May 28th, if you want to double check that.

Q. On that date do you recall giving numbers of people and amounts of seniority?

A. Yes.

Q. Do you recall a discussion of a group of thirty-five people without former bargaining unit seniority?

A. I would like to say the question was asked of the company on the 23rd about the composition of the seniority and the bargaining unit. This question was asked. We didn't have the information to give on the 23rd and we gave it on the 28th.

Q. I am not particularly interested in the date but do you remember at one point you told the union there were thirty — pardon me — there were forty-eight people working who had former [140] bargaining unit service, and thirty-five would not? Does that strike a bell?

A. I have a note here on the forty-eight and a break down on them but I don't have a note on the thirty-five.

O. Do you remember discussing thirty-five in addition to the forty-eight?

A. I don't remember the thirty-five. no.

Q. What date do you have indicating the discussion of the forty-eight?

A. In the afternoon of May 28th.

Q. Can you recall there were in fact people working on May 28th who had no former bargaining unit seniority?

A. Yes, I am sure there were.

Q. And can you recall that your discussion encompassed all people working on that date, whether or not they had former bargaining unit seniority?

A. Yes, we did discuss that.

Q. Can you recall the discussion of those without former bargaining unit seniority that the discussion would have to be in generalities because you were in such a mess you didn't know where the hell you were at?

*Mr. Wayman:* I hope that purports to be a quote.

*The Witness:* Yes, it does.

*Mr. Davidson:* We do use language occasionally such as that but not in a question, unless it is a quote.

[141] *The Witness:* You are asking for a specific list? A specific list at a specific time, I probably said that.

Q. (*By Mr. Davidson*) In the discussion of the thirty-five or of the people with non-bargaining unit seniority, since this is all you can recall, I am asking you if you said that these people were involved in some way or another for consideration but actually you were in such a mess you didn't know where the hell you were at? Does that strike a bell?

A. I knew where I was. I don't get your inference.

Q. Pardon me.

A. What is that referring to? I know where I was. I was on the tenth floor of the Commerce Building in the Federal Mediation Office. Certainly you don't mean that. What are you referring to?

Q. Did you know where you were with respect to this identity of this mass of replacements without former bargaining unit seniority, and with respect to the

identity of the jobs which they held at the time, and with respect to the identity of the people they replaced?

A. Did we know?

O. Yes.

A. Yes, we knew.

Q. And your answer did not pertain to this aspect of knowing where you were at?

A. I would say no. I want to say in respect to this thirty-[142]five that you keep mentioning —

Q. I will try to stop mentioning that.

A. I have no such figure. I simply have the algebraic figure of "X" here to represent the number of permanent replacements that have been hired at that time. We discussed with the union of the number of returning strikers and the number returning from lay-off. This is where the forty-eight came from. We told them in what seniority groupings they were and how many in each seniority grouping but we said as to the number this was—as to the number of current replacements, this was a quantity "X" and as far as I know we refused to tell them how many there were. I don't know where the thirty-five came from.

Q. Did you know what "X" equaled at that time?

A. Did I know?

Q. Yes.

A. It was on our records.

Q. Were those records readily available to you at that time?

A. Yes, sir.

Q. You recall saying at that time "We have people all over the place; we have got our paper work not up

to date, accounting department, sales, all of it so screwed up that we don't know where we are?" Do you recall saying that?

A. I probably did.

Q. You recall saying what this is going to mean in the [143] final composition of the organization in Erie before we get through and what we are going to do that people gets involved and see how many and who are the replacements, we don't even know ourselves?

*Mr. Wayman:* This is objected to because it is not relevant material. The witness could have said that and it would have no effect whatsoever on the outcome of this case.

*Trial Examiner:* That's true. Over a series of fifty meetings, I suppose a man would say most anything, either in or out of context in the course of that time. It is sort of a negative type of testimony, at best.

*Mr. Davidson:* I think the relevancy is—

*Trial Examiner:* You may answer.

*The Witness:* Your inference is I am sure we did not know who was replaced, and this is not so. All I was saying we did not have our records up to date, as of a given hour because it had to be done on a delayed basis because we didn't have the clerical help available. That's all that we knew. We could find.

Q. (*By Mr. Davidson*) Now will you ask the question I asked initially and that is do you recall making the statement as I read it?

A. Yes.

Q. Now can you tell me when Erie Resistor determined to resume full production by hiring replacements?

[144] A. Yes, sir, this was on May 2nd, just prior to the issuance of our letter of May 3rd.

Q. Did you start soliciting replacements at that time?

A. No, sir.

Q. At what time did you start?

A. The following week.

Q. Do you recall the date?

A. I would say we began accepting people following May the 11th, from May 11th on.

Q. When did you start receiving applications?

A. I assume again this is a matter of fact that can be established. I presently don't know.

Q. Had you received applications prior to May 2nd when you determined to resume full production?

A. No, sir.

Q. I take it you had received some prior to May 11th when you hired people?

A. This I do not know.

Q. Do you recall by what date the three hundred applications were received to which you referred earlier in your testimony?

A. No, but this again is a matter of record, and fact that could be substantiated.

Q. In your recollection of having made that statement, were they received fairly shortly after the determination to resume production?

[145] *Mr. Wayman:* I suggest the witness said he doesn't know but he can find out.

*Mr. Davidson:* He said he doesn't know the exact date but I think he can give me an estimate.

*The Witness:* I don't. I was negotiating, not hiring people. Somebody else was doing that.

* * * * * * *

[153] *Mr. Fleischut*: The general counsel will commence the day's hearing by introducting into evidence certain documents indicating the labor market in the Erie area.

I have under subpoena an individual who can identify these but by agreement of the parties they will be submitted in evidence not subject to formal proof.

I would like to identify "area labor market trends" January 1959 as general counsel's exhibit 37. The same document for March of '59 as number 38; May number 39, July, the same document for July 1959 as number 40; a publication of the U.S. Department of Labor entitled chronic labor surplus areas, as 41.

*Mr. Wayman*: Do you have a copy of this?

*Mr. Fleischut*: I only have one.

(Thereupon, documents were marked general counsel's exhibits 37 to 41, for identification.)

*Mr. Wayman*: I would like to have a copy of this exhibit, which appears to be quite a large book.

*Mr. Fleischut*: So there is nothing misleading here, I would like to indicate now the information I direct your attention to, sir. In general counsel's exhibit number 41—

[154] *Mr. Wayman*: If I may interrupt, Mr. Fleischut. These appear to be official documents of the United States Department of Labor, is that true?

*Mr. Fleischut*: Yes.

*Mr. Wayman*: Consequently, I am not going to question their authenticity. I assume Mr. Fleischut has obtained official documents of the United States Department of Labor and that these are authentic documents. I do however object to their admission on the ground the information therein contained is irrelevant and immaterial to the issues in this case.

*Trial Examiner*: All right, go ahead, Mr. Fleischut.

*Mr. Fleischut*: You want me to answer the objection?

*Trial Examiner*: What is the purpose of them?

*Mr. Fleischut*: The purpose of the documents is to point out that the Erie area during all times pertinent to the strike was an extremely chronic labor surplus area, and there was no difficulty in obtaining employees. This is demonstrated in general counsel's exhibit number 41 on pages 79 and 80 where it describes the Erie labor market situation, and in general counsel's exhibits 37 through 40 on the back cover is a chart indicating labor surplus areas which are classified "A" through "F", "F" being the most serious, and I direct the attention of the Examiner to the chart on the back of each of those documents indicating [155] in each of the bi-monthly periods reporting as of July 15th on the monthly report the Erie labor market was in the most chronic category.

Also I particularly direct your attention to a page in each of the exhibits—I am looking at gen-

eral counsel's exhibit number 40 — where the criteria of labor surplus classification is set forth, and it describes a group "F" which Erie is in each of the months reported, indicating the ratio of unemployment to the total labor force was in excess of twelve percent.

*Mr. Wayman*: What page is that?

*Mr. Fleischut*: Page 26 in exhibit 40. Twelve percent or more of the working force, and that the job figures are substantially in excess of the openings and the situation is expected to continue for the next four months. This then interprets the chart on the back and the same figures are presented inside. Now days we like things in picture form and we can see from the chart that Erie is among the few very chronic, most chronic areas in the months concerned.

* * * * * * *

[156] *Trial Examiner*: Are you now offering these documents in evidence?

*Mr. Fleischut*: I understand there has been no objection to their admission.

*Mr. Wayman*: That is not correct.

*Trial Examiner*: There is an objection to their admission on the ground of materiality.

*Mr. Wayman*: Not as to authenticity.

*Mr. Fleischut*: I am offering general counsel's exhibits 37 through 41.

*Trial Examiner*: I will accept them in evidence. I have grave doubt as to whether they are material

to the issues [157] here. I will receive them in evidence and they may be marked as general counsel's exhibits 37 through 41, inclusive.

(The documents heretofore marked general counsel's exhibit 37 to 41, for identification, were received in evidence.)

* * * * * * *

[157] ANGELO COLELLA a witness called by and on behalf of the general counsel, being first duly sworn, was examined and testified as follows:

*Trial Examiner*: Will you state your name for the record?

*The Witness*: My name is Angelo Colella.

*Trial Examiner*: Where do you live, Mr. Colella?

*The Witness*: Saugus, Massachusetts.

DIRECT EXAMINATION

Q. (*By Mr. Fleischut*) By whom are you employed, Mr. Colella?
A. The IUE-AFL-CIO.
Q. And in what capacity?
A. International representative.
[158] Q. Were you employed in this capacity during the course of the Erie Resistor strike in 1959?
A. Yes, I was.
Q. Did you partake in any way in the negotiations in an effort to settle that strike?
A. Yes, I did.
Q. When did you first appear in the negotiations?
A. My first session was on the 13th.

Q. Would you like a copy of general counsel's exhibit number 2, giving the dates of the meetings, while testifying?

A. Please.

Q. Did you participate in a negotiating session on May 14th?

A. There were two on May 14th and I participated in both of them, yes.

Q. Will you describe what type of meetings they were?

A. The first one was with the full negotiating team, both the company and the union, and the afternoon sessions were a side-bar conference. This side-bar conference consisted of Mr. Bordonaro and myself for the union, Mr. Ferrell and Mr. Schau from the company, and Michael Prime and Grover Stainbrook from the Mediation service.

Q. Which meeting was that?

A. This was the afternoon of May 14th.

Q. What kind of a meeting did you call it?

A. Side-bar conference.

[159] Q. Why was this meeting held?

A. This meeting was held in an effort to try to get down to some real brass issues on negotiations. I had been here for two days, the 13th and the 14th, and neither side seemed to be making any progress. During the recess I talked with Mr. Stainbrook and asked him—I said "Look, how do you think this is going to end up? You think perhaps if we had a side-bar conference it might help," and Mr. Stainbrook said he would see if he could arrange it, and he came back to me and said "Yes, I will call a recess and we will have a side-bar conference."

Q. Did the side-bar conferences and this side-bar conference in particular, differ in any respect other than the personnel present from the principal meetings?

A. I beg your pardon.

Q. Were these side-bar conferences any different than the full committee meetings?

A. Yes.

*Trial Examiner*: How could the witness answer that? He wasn't in on any prior meetings. If you want to limit it to May 13th—

Q. (*By Mr. Fleischut*) On May 13th and the morning of the 14th you met with the full committee?

*Trial Examiner*: Limit it to starting then.

Q. (*By Mr. Fleischut*) After the 14th did you meet in [160] other full committee meetings?

A. Yes, I did.

Q. How did the side-bar conference differ from the full committee meetings which you attended?

A. It was understood that these side-bar conferences would be held without the taking of minutes, which was so at the full negotiating session, that these would be off the record, and if conclusions were arrived at as a result of these meetings everything would be back to status quo.

Q. If agreements were or were not made?

A. If agreements had been made on some parts but a whole agreement was not reached, everything was taken back off the table and would be back to prior to the side-bar conferences. This is what the company made clear to us, they would be willing to

meet but in the event we didn't wrap it up entirely, we then would go back to where we left off in the full negotiation sessions. I found that at these side-bar conferences both the company and the union actually had a great deal more freedom. We weren't on the record. There wasn't anyone there taking minutes, as such. We could discuss many things which bothered the company or bothered the union and we didn't have to worry about "Well, this is in the minutes and this is what you said, or this is not what you said."

Q. What occurred on the 14th at the side-bar meeting?

[161] *Mr. Wayman*: I suppose I should object to that, if the understanding was it was off the record. It does seem a little odd to put in an off the record conversation.

*Trial Examiner*: Well, I think the witness can describe what happened at the side-bar meetings. I think maybe his characterization of the meetings probably went a little beyond what might be considered as proper but I don't see any harm has been done. All right, go ahead.

*The Witness*: I am sorry. Will you repeat the last question?

Q. (*By Mr. Fleischut*) What progress was made at the meeting of the 14th?

*Mr. Wayman*: This part is objected to, because it calls for a conclusion. I think the question originally was what happened at the meeting.

*Trial Examiner*: Yes, what happened at the meeting.

*The Witness*: On the 14th at the side-bar conference we discussed those items which were now open, and that was sections 11, 12, 13, 14 and 15.

Q. (*By Mr. Fleischut*) What did they deal with?
A. With seniority, the up-grading and so forth, bumping, and those sections.
Q. What else was discussed?
A. Two, three, 18 and 19.
Q. What did they deal with?
[162] A. Two dealt with the union shop. Three dealt with check-off. Eighteen dealt with superseniority for officers, and nineteen dealt with superseniority for stewards. Now it could be that way, or it could be the other way on 18 and 19, but 18 and 19 dealt with superseniority for officers and stewards.
Q. Had agreement been reached on these sections before?
A. Well, I understood agreements had been reached on these sections before.

*Mr. Wayman*: Objected to. The witness has in effect said he didn't know.

*Mr. Fleischut*: All right then.

*Trial Examiner*: Go ahead.

Q. (*By Mr. Fleischut*) What else was discussed?
A. On the 14th at the side-bar conference the company stated that they would need some type of protection or additional seniority for those people who had crossed the picket line.
Q. Were there any agreements made on the 14th?
A. On the 14th it was strictly in the talking stages. However, before we left that day Mr. Ferrell and

I went over—we leaned over each other's shoulders and we itemized the five points that the company would give us an answer on on the following day. Both sides at that point felt we had had enough of discussion so that we understood each other's problem, and it certainly seemed like we could take [163] 11 through 15 off the table, we could arrive at some agreement.

Q. All right, when was the next meeting?
A. On the morning of the 15th.
Q. What type of a meeting was this?
A. This was also a side-bar conference.
Q. And who was present?
A. The same people that were present the day before—Mr. Ferrell, Mr. Schau, Ed Bordonaro and myself, and Michael Prime and Grover Stainbrook, from the mediation service.
Q. If you will examine general counsel's exhibit number 2, do you find this meeting referred to on the 15th of May?
A. No, I don't see it.
Q. Did such a meeting take place?
A. Definitely.
Q. Where did it take place?
A. At the mediation office here in Erie.
Q. Did you tell us who was present?
A. Yes.

*Trial Examiner*: He told us that.

Q. (*By Mr. Fleischut*) What took place at this side-bar conference?
A. Well, the company came in and said "Well, we think we have some agreements on seniority provisions

and some of these other matters." I have a note I would like to refer to on that particular day.

[164] *Mr. Wayman*: May I inquire whether or not this is a note that you made at the time, Mr. Colella?

*The Witness*: Yes, sir, as a matter of fact this is the note—the paper was given to me by Mr. Ferrell and he had already described a couple of problems at the top of the page, and then at the bottom of the page I wrote, with Mr. Ferrell's approval, what was to be answered the following morning.

*Mr. Wayman*: May I see it please?

*Mr. Fleischut*: When did he give you the paper?

*The Witness*: On the 14th.

*Trial Examiner*: Just a moment.

*Mr. Wayman*: On the 14th, the day before?

*The Witness*: Yes.

*Mr. Wayman*: This was the meeting of the 15th?

*The Witness*: Right. You want me to go on?

Q. (*By Mr. Fleischut*) This is a paper given to you on the 14th, is that right?

A. Yes, he give me this piece of paper on the 14th and at the conclusion of the meeting on the 14th, I wrote the items which the company was going to give an answer on, on the following day,

Q. Whose handwriting appears on it?
A. On the top, I guess—I know it is Mr. Ferrell's explanation of some moves in the department, and on the bottom [165] half is my handwriting.
Q. Is this writing at the top of the page?
A. No, it's—well—
Q. Doodles, scratches?
A. No, it is not doodles or scratches because these are supposed to signify "X", "Y" departments and so forth in the plant and we were trying to figure out how the moves would be made from department to department, and these are explanatory signs.
Q. These are explanatory signs here above the line?
A. Yes.
Q. Who made the writing below the line?
A. I did.
Q. Now please tell us what occurred at the meeting?
A. I will have to go back to the 14th. On the 14th when we left, we agreed that these were the issues in dispute, a wage reopener with the right to strike or without the right to strike—2, 3, 18 and 19—
Q. You are referring to contract sections?
A. Contract sections 2, 3, 18 and 19. The charges and counter charges, talking about the legal action that was pending at the time and the discharges. Seniority proposals 11 through 15 which incorporated new operations, freezing of new departments and so on.
Q. Referring to contract sections?
[166] A. Yes.

*Mr. Wayman*: What numbers were they?

*The Witness*: Number 11 through 15, and superseniority, for the people who crossed the picket

line. On the morning of the 15th Mr. Ferrell said "Well, we have an answer for you," and he took out his copy which was similar to mine and laid mine out and said "On the wage reopener, the company will agree to a wage reopener with the right to strike in six months," so I checked it off. He said "We will agree to items, contract items 3, 18 and 19," and as he was referring to them I was checking them off.

Q. (*By Mr. Fleischut*) Those are the check marks on the paper?

A. That is correct. He said the company would be agreeable to the dropping of charges if the union dropped the counter charges.

Q. What do you mean by charges and counter charges?

A. There was an election pending there and the union felt upon settlement of the strike both sides should drop this legal action, and I check marked that, and then he says on the seniority proposal we can reach agreement on the seniority as we discussed last night, just require finalizing it into the language.

Q. What did that contemplate, the seniority proposals, what particularly was to be done in certain operations?

A. Freezing these departments when new operations had been introduced.

Q. Go on.

A. At that point—no, I am sorry. I said "Well, it looks like we are going to get a settlement here today", and Mr. Schau spoke up and said "Gordon, don't forget—"

Q. Who is Gordon?
A. Mr. Ferrell.
Q. Do you know who Mr. Schau is?
A. George Schau, yes. He is an official of the company.
Q. Go on.
A. Mr. Schau interrupted and said "Gordon, don't forget the two stickey issues", and Gordon said "Yes, I am coming to that." He said "Now, we have a problem with the dischargees and a problem on the superseniority," which we had already indicated the union didn't like.
Q. How many dischargees were there?
A. Four at that time.
Q. All right, what was the other problem besides the dischargees?
A. Superseniority.
Q. Go on and tell us what he said.
A. The company said then—
Q. Who?
A. Gordon Ferrell speaking at the time for the company said, [168] "On the dischargees our proposal is if these people are cleared of their charges we would be willing to reinstate," I then asked "What do you mean by being cleared? If the charges were dropped would they be considered cleared," and now Schau said "Yes, of course, that's what we mean." Eddie then pointed out "Does this mean then we really don't have a problem with four people because two of them don't have any charges," and the company's answer to that—I am not sure which one it was, Gordon or George—said "Well, if they don't have any charges pending, of course, they are cleared, and if the charges on the other

two people are dropped, they would be considered cleared." So then we asked them, "Well, if we made an effort to get these charges dropped, they would be considered cleared and would be eligible for reinstatement," and Mr. Schau, in particular, said at that time "That is the thing you should do. If it was me that is what I would do as soon as possible."/ We then discussed the superseniority and in sum the company said they felt they had to have it; they had made some promises to these people when they came to work, and so we discussed this at some length, and the company—I have here a note—and the company admits it can't be moved on this issue. The union, myself in particular, told the company that I felt if they would reconsider their position on superseniority we could reach an agreement.

Q. An agreement on what?

[169] A. On the entire contract, because we felt they were giving us the opportunity to have these four dischargees reinstated if we could get the charges dropped, and there certainly seemed to be a remedy, and all of the other things, such as the 11 through 15, we had reached an agreement on, sections of the contract, and I then asked them about two, item number two, that dealt with the union shop and the company said, "Well, look —"

Q. Who said this?

A. I did.

Q. What person?

A. I beg your pardon, sir?

Q. Excuse me, go on.

A. I asked the question. I said "How about section 2 of the contract," and Mr. Ferrell said, "Well, if we could reach agreement on the rest of these items section 2 wouldn't be no problem at this time."

Q. The rest of what items?

A. On everything else we had discussed that day. This would have meant actually as far as the contract items as such that the only thing that was left hanging was item 2 but the company indicated if we could reach a settlement that everything would be agreed to, that this item 2 would not be a problem.

Q. Item 2 would not be a problem if what sections were settled?

[170] A. Well, as a matter of fact, we had already agreed we could settle 11 through 15 and 3, 18 and 19. The only thing that was left —

Q. What was holding up section 2, was my question?

A. Well, the company felt —

Q. What other sections?

*Mr. Wayman*: Let him answer.

*Trial Examiner*: Yes, you are getting into a discussion over this. If you want the witness to tell what happened, let him tell what happened. I think he is doing all right without this constant butting in as to who said this and who said that. I think it is clear in the record, otherwise you get him off on these tangents.

*The Witness*: Two was not contingent on anything else. It was just as if we could arrive at a complete settlement on all of the other issues also, this

would not be any problem. This would be all right as it was in the present agreement.

*Trial Examiner*: Two is the union shop?

*The Witness*: That is correct, sir.

Q. (*By Mr. Fleischut*) Did you participate in any further side-bar conferences after that time?

*Trial Examiner*: Was that the conclusion of that meeting? What was the conclusion?

*The Witness*: I think this is important. At the con- [171] clusion of this meeting, the union stated that on the discharges we felt this was perfectly agreeable because we had arrived as some remedy. On superseniority that the union could not accept any form of superseniority and the company suggested that we take some time to think about it, and in the meantime they were going to go back and see if they could come back with anything else on superseniority. I told them if they dropped the superseniority issue, we had a complete agreement, so we then recessed until the morning of the 18th. On the morning of the 18th the full negotiation committees from both sides met at the mediation office. However, prior to any meeting taking place, Mr. Stainbrook called me into his office, and Mr. Ferrell was there, and he said, he said, "Well, Ange, have you come up with anything on this superseniority?" I said "No, we had spent the week end working on the dropping of charges against those two employees who had charges pending but we certainly had no solution to superseniority, but had his position

changed," and he said no, he says "No, our position has not changed. This is something that management people want and we must have." I told him "Well, there just can't be — this union just can't agree to any superseniority for people who crossed the picket line. This would be a violation of the thing we hold dear," and with that Mr. Ferrell said "Well, in that case, I don't think it would do us any good to meet today and we probably should recess for [172] two or three days," and we did. The meeting that morning lasted for perhaps twenty minutes, or half an hour from the best of my recollection.

Q. (*By Mr. Fleischut*) You may refer now to general counsel's exhibit number 2. Which item, if any, are you referring to on that list of meetings?

A. Well, I don't find the 15th or 18th meeting here on the list. The next meeting was held I believe on the 21st. I am sorry. Yes, I do find 5/18 — May 18, 1959 — and the next meeting was held on the 22nd. That is correct.

Q. And the 5/18 one is the meeting that never got started, is that correct?

A. That is correct.

Q. When did the next meeting take place after that?

A. On the 22nd, the morning of the 22nd.

Q. Now, what happened at that meeting, or any later meetings with the agreement at the side-bar conference of the 15th?

A. All of the agreements reached at the side-bar conferences were then removed and we were back to May 14th, in the morning. When we met on May 22nd the union submitted a proposal in which we

tried to take into consideration those items which had been discussed in the side-bar conference and which we felt we had reached an agreement on.

Q. What happened to that agreement proposal?

A. The company, as I remember it, accepted parts of it, and [173] rejected other parts of it, and made it clear that superseniority was the stumbling block in our negotiations.

*Mr. Wayman*: This is objected to, if the Trial Examiner please. I think that is a conclusion. That may or may not be correct. As nearly as possible, the words spoken might be important at this point on this item.

*Trial Examiner*: Yes. Of course, the witness should relate just what each party said, not each party, but what each side said insofar as he can recall. In other words, state the union's position and the company's position.

*Mr. Wayman*: Ordinarily, some of these other things, there isn't any harm in a very general statement, but I think on this point I would like to know as nearly as possible what was said.

*Trial Examiner*: It strikes me superseniority is the main issue.

*Mr. Wayman*: Certainly the main issue in this case but not the only issue.

Q. (*By Mr. Fleischut*) Did you participate in any further side-bar conferences?

*Trial Examiner*: Wait a minute. Had you finished with the May 22nd meeting?

*Mr. Fleischut*: I didn't want to develop anything on May 22nd.

*Mr. Wayman*: Mr. Fleischut, why did you ask him [174] questions about it then? Excuse me. I should address my question to the Trial Examiner.

*Mr. Fleischut*: The point I made on May 22nd was the company had rejected the items of the 15th in the company's proposal of the 22nd.

*Trial Examiner*: I don't know if the witness testified to that. He said they accepted some and rejected some of the items. What was the conclusion of the May 22nd meeting? How did it end?

*The Witness*: It ended, the company told us they had a firm position on superseniority or some type of it, some type of additional seniority for those people who had crossed the picket lines, that the four dischargees were still at issue, and some of the sections 11 through 15 were still open, and that 2, 3, 18 and 19 were still open. That's the best of my recollection.

*Trial Examiner*: All right, how did the meeting end? Did you agree to hold another meeting, or hold a side-bar conference or what?

*The Witness*: No, then there were more full negotiation meetings from that point until June the 3rd or the 4th.

*Trial Examiner*: All right, go ahead, Mr. Fleischut, take it from the conclusion of the May 22nd meeting.

Q. (*By Mr. Fleischut*) What was the next side-bar meeting?

*Mr. Wayman*: That is objected to because I haven't any [175] idea what the next side-bar meeting was, if there was one.

*Trial Examiner*: Overruled. The witness may answer.

*The Witness*: At the next side bar conference which took place on June 4th and 5th, or 3rd, 4th and 5th —

Q. (*By Mr. Fleischut*) You may look at general counsel's exhibit number 2 and see if you can identify those meetings if they appear thereon.

A. The 3rd, 4th and 5th there were side-bar conferences. We met on the 3rd and we again discussed sections 11 through 15, although I think by this time 14 had been taken from the table. I think we actually discussed 11, 12, 13 and 15. We discussed this in some detail and at some length and finally at the end of the 4th we reduced or had by that time had reduced to writing everything we understood that was so on sections 11, 12, 13 and 15, and we also had reached an agreement on 3, 18 and 19. There are some copies around, which I don't have at this time of what transpired the 4th, the 3rd and 4th.

Q. By that agreements which you were reached?

A. Agreements which were reached and typed and both sides had them.

Q. May the witness see general counsel's exhibits 17, 18, 19 and 20? Can you identify these?

A. Yes, I can.

Q. Let the record indicate the witness is examining [176] general counsel's exhibits 17 through 20. What are they?

A. These were the agreements reached on the 4th of June. I initialled them and Mr. Ferrell initialled them for the company and it does say the agreements reached, sections 3, 18 and 19, section 11, 13 and 15. These were the agreements reached on the 4th.

Q. Did you mention section 2 before?

A. No, I didn't.

Q. Was section 2 agreed to on that date?

A. No section 2 was not agreed to on that date. Then we came back on the 5th. Mr. Shioleno was present on the one of the 5th and when we started this meeting Mr. Ferrell stated that they had to make a change now in section 11 which ha dalready been agreed to the night before, and I as much as said what more do you want from us? We have given in on nearly every point and it just looks like someone here is trying to prolong the strike," and I said "Whose idea is this to ask for changes in section 11 now this morning?" I said, "Is it you, Louie?"

Q. Who is Louie?

A. Mr. Shioleno. He is also a company official. I believe he is the manager or general manager of the electronic division, and Mr. Shioleno said "Now, look, I am getting blamed for a lot of things but if it wasn't for me," he says, "we could have replaced every employee in that plant," and he [177] banged the table and he said "it was only me that prevented the company from doing this." He said "We have over three hundred applications on hand and the company is all set to replace but I stopped it because I don't

want to break this union in spite of what some of these union people think." He said "Isn't that right, Gordon?"

Q. To whom was he addressing his remark?

A. To both — well, he answered responsive to me.

Q. Who is Gordon?

A. Mr. Ferrell.

Q. Did Mr. Ferrell reply?

A. No, Mr. Ferrell did not reply. He just didn't answer and we then began to talk about section 11 any way. Well, at that point I said "Well, it seems —" then we did finally agree to section 11, and at this point I said "Well, look, so there will be no misunderstanding perhaps we had better initial these copies today," so on those sections that we agreed to on the day before we wrote 6/4/59, and then on the — as a matter of fact — yes, that's what happened on 6/4/59, and the other one we put 6/5/59 on section 11 and also we made two changes. I can remember one more thing which gave me the impression that Mr. Shioleno had at least recognized some of our mutual problems and he, as a matter of fact, signed a section which Mr. Shioleno agreed to with us, and this is the other change.

[178] Q. On what page is the section 11 agreement, general counsel's exhibit number 17, does the initial changes occur?

A. On Page one.

Q. I refer you to marginal remarks, "LJS" and the date, is that what you are referring to?

A. Yes.

Q. That's where Mr. Shioleno signed?
A. Yes, and he also wrote the date on the bottom part, the bottom part here is where Gordon Ferrell signed.
Q. The 6/5 and then the "G"?
A. Yes, that's right.
Q. I am directing your attention to the negotiating session of May 28th. Do you find that on general counsel's exhibit number 2?
A. Yes, I have.
Q. Do you recall any specific statements made that day concerning superseniority?
A. There were many statements made on superseniority. Can I refresh my memory by going to some of my notes?
Q. Yes.
A. This is on the 28th? Yes, on May 28th there was some discussion as to who the people were that had crossed the picket line. The company stated that people who had returned to their former jobs, there wouldn't be any problem. However people that had been on lay off or new hired would [179] need some additional seniority and they stated that as a strike settlement the company would want some superseniority for these people who crossed the picket line, and they then said the company now wants to add a flat number of years for these people for the purpose of lay off and rehiring with no exceptions. As the talk continued—then we said what do you mean by a flat number of years and they said "From looking over the picture, it looks like we will need twenty years," so the company wants to add twenty years to their seniority. I asked them, I said "Well, does this mean that if a new person has been in the

plant for a period of two weeks, that he will receive an additional twenty years," and the company said yes, and I said "How about probationary? Aren't they probationary in accordance with prior contract provisions," and they said we will decide that but for all intents and purposes they will have twenty years added to whatever they presently have today and as a matter of fact the company now makes us a demand upon the union, the company demands that we prior to any strike settlement that these people must have twenty years of superseniority added to their—

Q. Did they indicate any flexibility on that point?

A. As a matter of fact, from memory, I think they told us they were immobile on this issue, and they could not move. Here it is. I have a note on it where the company admitted [180] that they were immobile and I have it in quotes, that the company had made some firm commitment to these people.

Q. In what regard had they made firm commitments to them?

A. They told us the commitments they had made to these people was they had told them upon the settlement of the strike that they would not be laid off?

Q. Did they at other times propose other forms of superseniority?

A. Yes, they did. There were four or five different proposals. I would say that the first proposal was, first they needed some kind of superseniority, and then they come back and said they wanted seniority equal to the greatest seniority in the department, and then they said they wanted a flat number of years, and then they said they wanted twenty years, and then another time they were talking about a red circle for

these people, but at all times there was no question but what they wanted superseniority, and it was to be—they just wanted superseniority in one form or another.

Q. Well, now, have you exhausted your recollection of the events of the 28th?

A. Well, only one other thing, that the company would not be willing to compromise on this superseniority but it would only be used for layoffs and recalls, and then that date—at the meeting on that day, there seemed to be some conflict [181] between the company committee. Mr. Ferrell said this would only be for the purpose of lay off and rehire, recall, and that they would only be permanent replacements on the job, and one of the other members of the negotiating committee—I think it was Mr. Shioleno said they were not permanent replacements on the job, that they were fixtures with this company, and "we intend to see that they have a job."

Q. May I see your notes? Directing your attention to a remark at the bottom of page two of your notes of the 28th, does that refresh your recollection?

A. Yes, it does. In the discussion of superseniority, the company stated that they would not be willing to settle on any half measure and especially on superseniority issue, so the union at this point—

Q. Who is the union? Who is speaking?

A. I believe it was Mr. Copeland at this time who said "Well, if we are willing to tear up the entire contract and give it back to you and start from scratch, would you then be willing to move off from the superseniority," and they said "No, we are not going to move off the superseniority," and then we recessed.

Q. I am now directing your attention to the events that transpired on or about June 24th and 25th. Do you recall telephone conversations, if any, with company negotiators [182] about that period of time?

A. Well, on June 24th we had a side-bar conference—I am sorry. We started off with a negotiation session and in the afternoon we had a side-bar conference, and during the recess this thing came about. Mr. Coyne was there in the morning, and he had made some proposals on settlement of the strike, and returning to work, and we just couldn't seem to arrive —at least the company was willing to accept anything we proposed at that time. We had suggested that we return to work and leave these two issues for further discussion, the issue of the dischargees and the superseniority, but the company just would not accept this, so during the recess—

Q. What day is this now?

A. On the 24th, June the 24th. During the recess we again went into a side-bar conference. We then began to discuss some way to arrive at an agreement that day. The union certainly felt it was imperative that something had to be done that day.

*Mr. Wayman:* That is objected to, what the union felt.

*Trial Examiner:* Yes, that may go out. Just tell us what happened at the meeting.

*The Witness*: On the 24th I asked the company if we could get this thing settled. We were willing to do anything at all to get it settled and we discussed the possibilities of a moratorium.

[183] Q. (*By Mr. Fleischut*) A moratorium on what? A. A moratorium as far as the strike—no, I am sorry. The moratorium was as far as granting superseniority to any person who might cross the picket line, and that the union would withdraw its pickets immediately. The company said they felt if we withdrew the pickets that certainly the climate would be a lot better for attempting to arrive at a full agreement, so we discussed four or five problems, and there is a copy of that around too, in fact it would refresh my memory on that, but any way the agreement arrived at was the union would immediately withdraw its pickts, that the union was willing to agree that the superseniority issue would be resolved by the National Labor Relations Board, that discussion would be held on the now five discharged employees. The company made a proposal on Karpinski and Skiba, I think—yes, I am sure it was, and so in our proposal we incorporated the five but said in no event will disciplinary action be for more than what the company had already proposed. Any way, the last sentence was the company would agree a moratorium would be granted—it would be on the grant of superseniority for those people who had crossed the picket line. While discussing the thing we called in our secretary to type this out, and even while she was typing it out, the company made suggestions as to what the language should be. This was a joint effort to reach [184] a settlement. There was no question about that. As a matter of fact, Mr. Shioleno dictated the very last paragraph about how the grant of superseniority, the starting of superseniority, how it should be worded.

Even during this conversation we said "Look, now, have there been any people hired today? Is the company attempting to replace people today?" And telephone calls were made from Mr. Stainbrook's office to the plant and the question was asked about how many people had crossed the picket line and also that no one should hire any more people while this thing was being considered, so we walked out that day and we told the company we would immediately withdraw the picket line and that they would give us an answer the following day. Mr. Ferrell said "Well, look, let's set a tentative meeting for tomorrow morning at ten o'clock."

Q. What date would that be?

A. The 25th.

Q. Of what month?

A. June 25th, "but in the event we need any more time, we will let you know; we will notify the mediator and let you know but in any event the meeting will be held no later than the 26th." So we left the building and immediately went to the plant and withdrew our pickets, told them to get off the picket line and get down to the office, there would be no more picketing from that point on. We called the newspapers, [185] television and radio in order to make sure that none of our pickets appeared at the plants. We just wanted to make sure that nothing could possibly happen that the company would be able to say "Well, look, you have pickets there." We just made every effort possible to make sure this agreement was carried out. We just had no choice as a matter of fact. We were at the point where we had to settle. The strike was over, for all intents

and purposes, and we were dead. We didn't have the pickets on most of the time and when we did we had either one or two there.

*Trial Examiner*: Suppose you go ahead and tell us what happened after that. You withdrew the pickets.

*The Witness*: All right, we withdrew the pickets and we went back to the office. About seven-thirty that evening I got a call from Gordon Ferrell and Gordon Ferrell said, "Ange, I don't know how so say this but when we got back to the company I ran into a buzz saw. Management knocked my ears off, the deal is off." I said "What do you mean the deal is off? It can't be. We have already withdrawn our pickets," and he said "Well, the only thing I can tell you is you had better put your pickets back on because we don't have a settlement." I told him this was impossible, that we had taken the company at its word, we had withdrawn the pickets and we didn't intend to put the pickets back on. He then told me he said "Well, we will see what can be done, [186] and I will call you back tomorrow morning at the office, I will call you sometime around nine-thirty or ten o'clock." That's what happened on the day of the 24th.

Q. (*By Mr. Fleischut*) Did the union ever agree to superseniority?

A. No, we never did.

Q. What was the final disposition—

*Mr. Wayman*: That also is objected to as a conclusion but I think the document in the record will

speak for itself more eloquently than the witness. This is perhaps not terribly important.

*Trial Examiner*: His answer may stand. Over ruled.

*Mr. Fleischut*: No further questions.

*Trial Examiner*: Suppose we take a ten minute break. While you are on the witness stand don't be talking to any of the other witnesses in the case.

(Recess.)

*Trial Examiner*: All right the hearing will be in order. Go ahead, Mr. Wayman.

*Mr. Wayman*: Before I begin my cross examination of Colella I am going to ask the general counsel to produce for me any affidavit that Mr. Colella may have signed in connection with this case.

*Mr. Fleischut*: I think it would be proper procedure if you asked the witness did he sign one and give it to the [187] general counsel.

*Mr. Wayman*: All right, Mr. Colella, did you sign an affidavit and give it to the general counsel?

*The Witness*: Yes, I signed an affidavit.

*Mr. Fleischut*: You are now asking for production of that affidavit?

*Mr. Wayman*: I am, indeed.

*Mr. Fleischut*: Let the record indicate I am now presenting Mr. Wayman with a thirty-eight page affidavit signed by Mr. Colella.

*Mr. Wayman*: Now I have this very thick batch of papers in my hand. I will require sometime to study them, of course, but even before I study them, I notice that the paper I have is headed "I, Edward F. Bordonaro," on the first page but on the last page it is signed by both Mr. Bordonaro and Mr. Colella. Mr. Colella, apparently you signed the same affidavit, identical affidavit that Mr. Bordonaro signed, is that correct?

*The Witness*: That is correct.

*Mr. Wayman*: May I have just a few minutes to examine this, sir?

*Trial Examiner*: We will take a five minute recess then while you are reading that.

(Recess.)

*Trial Examiner*: All right, the hearing will be in order. [188] Go ahead, Mr. Wayman.

*Mr. Wayman*: I should like to ask the Trial Examiner's permission to have some time over the lunch period to examine the affidavit supplied me by Mr. Fleischut at my request, and I think perhaps it might save time—it is now eleven-fifteen approximately—if we were to come back about one-fifteen. I think I could examine the affidavit rather completely by that time.

*Trial Examiner*: Is that satisfactory to you, Mr. Fleischut?

*Mr. Fleischut*: Yes.

*Trial Examiner*: All right, we will take a little early and an extended lunch hour today. We will be

back at one-thirty. That will give you plenty of time.

(Whereupon, at 11:15 o'clock, a.m., a recess was taken until 1:30 o'clock, p.m.)

[189] (Whereupon, the hearing resumed, pursuant to the taking of the recess, at 1:30 o'clock, p. m.)

*Trial Examiner*: The hearing will be in order.

*Mr. Fleischut*: I do not believe the witness is in the court room.

*Trial Examiner*: We are all ready bu. no witness. Here he is. Go ahead Mr. Wayman.

ANGELO COLELLA resumed the stand, was examined and testified further as follows:

CROSS EXAMINATION

Q. (*By Mr. Wayman*) Mr. Colella, before we adjourned for an extended lunch period I think I asked you whether or not you made an affidavit and gave it to the general counsel, and I think you said you did. Is that right?

A. No, I said I signed one.

Q. You signed an affidavit but you didn't make the affidavit?

A. Excuse me. There was an affidavit prepared for Mr. Hope and it was a joint effort of both Mr. Bordonaro and myself, and this is the document that I signed.

Q. Now the affidavit you signed covered meetings before May 13th, didn't it?

A. That is correct.

Q. But you did not attend any of those meetings?

A. No, I did not.

[190] Q. Now as a matter of fact you were not in Erie prior to the 13th of May?

A. I was in here on May 10th or 11th.

Q. So you have no knowledge as to whether or not the information contained in this affidavit, no personal knowledge as to whether or not the information contained in this affidavit prior — in meetings prior to May 13th is correct?

A. That is correct.

Q. I am going to show you the affidavit and there are several questions I would like to ask you about it. Would you please turn to page 18? Do you have page 18?

A. Yes, I do.

Q. Will you look at the paragraph numbered 69, towards the bottom of that page?

A. Yes.

Q. Now as I understand that paragraph it says "Before recessing we discussed the five following issues: One, seniority as it applied to bumping, upgrading and lay off; two, wage reopener; three, the four dischargees; four, legal action, and, five, superseniority for scabs." Is that what it says?

A. That's what it says.

Q. And again as I understand the affidavit it related to the meeting of May 14th, is that right?

A. That related to the side-bar meeting on May 14th, that's [191] right, sir.

Q. These were the five issues that were open at that time?

A. Well, I think what actually happened there was that, when we recessed, we had reached some agreement on those five issues among the parties at the meet-

ing but the company was then going to take it back — that is the company representatives were going to take it back and discuss it with management and come back with an answer the following day.

Q. May I ask what agreement you had reached on superseniority?

A. On superseniority there was no agreement, sir.

Q. Now if I remember your testimony correctly, you said the company agreed with you on a wage reopener. Did you say that?

A. As a matter of fact, what actually happened there is on one point the wage reopener was point one, and when the company come in on the following morning, as I remember it, they said "we will agree to a wage reopener and we will also go along with the right to strike."

Q. You think they said they would go along with the wage reopener with the right to strike? Are you sure that wasn't without the right to strike?

A. No, I remember that because prior to that the two or three meetings I had been in to the company had taken the position they would not go along with the right to strike. However, on the morning of the 15th in my notes — I don't have them now but they will indicate when we left it was just the [192] wage reopener but when the company came back the following morning it says "we will be willing to grant the wage reopener with the right to strike," and I might say this took us back abit and even more so when we reported to the full negotiation committee that the company is willing to day to grant a wage reopener with the right to strike, which prior to this —

Q. That didn't happen, did it?
A. I beg your pardon?
Q. The contract did not contain such a wage reopener?
A. It happened on the 15th.
Q. I am saying the contract does not contain such a wage reopener?
A. No, it does not.
Q. Now if you will look at general counsel's exhibit 2, which is a list of meetings, as I recall you said there was a meeting on the 15th but the exhibit does not show a meeting on that day, is that right?
A. No, it does not.
Q. And is it your testimony that in addition to the meetings shown on there, there should be shown a meeting off the record or side-bar meeting on the 15th?
A. Yes, sir.
Q. So that the number of meetings instead of being fifty-two should be fifty-three?
A. I don't know how I should answer that — fifty-two or [193] fifty-three, more or less. I don't know.
Q. In any event, there should be one more meeting added?
A. Yes, the meeting for the 15th.
Q. In the course of your testimony, you said that in this meeting of the 15th Mr. Ferrell said if you could reach agreement on everything else that you could agree on this section to the union shop. Do you remember that?
A. Yes, this took place in both the 14th and the 15th. When we recessed on the 14th items 3, 18 and 19 had been in principle agreed to and we thought we had reached an agreement on section 2 also in principle

that this would not hold up the settlement if we could arrive at an agreement on everything else.

Q. All right, now, if I made everything else include this superseniority that we are discussing —

A. Our proposition on the 14th, the company asked us to consider something for superseniority and we in turn told them that they maybe should consider something. The superseniority thing we told them we couldn't agree to it and we asked the company if they could come back without that particular proposal or if they would be willing to drop it.

Q. Now if I may get this clear in my own mind and in the record, everything else did include the superseniority question, did it not? When you said everything else you included superseniority?

[194] A. As having an agreement on?

Q. As having to be settled?

A. Yes.

Q. Will you now look at page 19 of this affidavit, this joint affidavit. If you will please look at the last sentence of paragraph 72, and I refer particularly to this part of the sentence, "We felt with the settling of the strike that all of the employees should be retained in line with their real seniority." Did you express that to the company at that meeting?

A. Yes, I did.

Q. And did this not mean that all of the replacements who had been hired would have to go ?

A. What we said at that time was the company had brought up this problem of having people in the plant and wanting to give them superseniority. We told the company that we couldn't agree to superseniority and instead we would agree once the strike

was terminated or ended that all of the employees would return in line with their seniority.

Q. Now do you remember my question? Do you think you have answered it?

A. I think I have, yes, sir.

Q. Did your answer mean that your position was that all of the replacements had to go out of the plant?

A. Well, what we said about the replacements at that time was [195] that in effect within a time, yes, they should all go out of the plant.

Q. Within what time?

A. Within some period of time.

Q. What period of time did you express?

A. At different times we talked about two to three months, or six months.

Q. How much did you say on this particular day we are discussing here? This is the meeting of—the sidebar conference apparently on May 15th. Did you specify any time?

A. I think we made it pretty clear to Mr. Ferrell that we as the union could not accept superseniority in any form for these people. We asked them—we told them we recognized they may have a problem the way they already had some people back to work but superseniority wouldn't be anything we could do.

Q. Mr. Colella, I don't think the question calls for that answer.

A. I am sorry. I misunderstood the question.

Q. All I want to know is at this meeting on the 15th you expressed any time within which the replacements had to go, or afterwards replacements had to go, if you know. If you don't know, say so.

A. Let me check my notes. I think there was some discussion [196] concerning a period of time.

Q. Did you say anything about a particular period of time at this meeting?

A. I can't recall.

Q. All right.

A. I can't recall, sir.

Q. Now if I may, I will ask you whether or not your proposition was that those who had been replaced would come back to work with the seniority they held prior to the beginning of the strike?

A. Those that had been replaced would come back to work at the end of the strike? Is that what you said?

Q. That's right, with their seniority.

A. Yes.

Q. That was your position?

A. Our position was that upon the completion of the str e everyone would return in line with their seniori y. As a matter of fact this is what the company indicated to us also, that even though they may have had some replacements—

Q. I just asked you your position?

A. This is how we arrived at who was to come back.

Q. I don't think I asked you how you arrived at it.

*Trial Examiner:* Just answer the question.

*The Witness:* I am sorry.

Q. (*By Mr. Wayman*) Your position was, those whoever the [197] company had replaced, whoever they might be, had to come back to work?

A. That is right.

Q. And that was your position right through to the end of the strike, was it not?

A. That would be correct.

Q. Would you please look at page 21 of this joint affidavit. Paragraph 81 which is at the top. Is it not correct, as that statement seems to indicate, that at the meeting of May 23rd Mr. Ferrell gave you the number of employees in the bargaining unit who were presently working?

A. That seems to be my recollection, sir, yes.

Q. In other words, this statement in the affidavit is correct?

A. I believe it to be, yes.

Q. Will you now refer to paragraph 83 on that same page. Have you read paragraph 83?

A. Yes, I have.

Q. Paragraph 83 contains what purports to be a quotation of a statement by Mr. Ferrell, is that right?

A. I am sorry. 83, yes that is right.

Q. Would you read that quotation for us please, and tell us if that is correct, a correct statement of what Mr. Ferrell said?

A. You want me to read it ?

Q. Will you, please?

[198] A. "Mr. Ferrell then said 'I want to make it clear that this position, superseniority is not taken simply as a bargaining point for leverage in order to resolve something else. The company is serious in its desire to see these people continue to work, that some provision be made for them'."

Q. Is that a correct statement of what Mr. Ferrell said, to the best of your recollection?

A. Yes.

Q. The particular words that he spoke?

A. To the best of my recollection that is correct.

Q. If you will look at page 21 paragraph 85 I see that that deals with the company's statement regarding the information at to the names of people who had been replaced, is that correct?

A. That is correct.

Q. Did Mr. Ferrell tell you why he was not providing that information at that time?

A. Without even turning the page I think he said "I think I know what you mean; we don't have to give you this information because of Oklahoma Rendering case

Q. Did you know the case to which he was referring?

A. No, I am not a lawyer, sir.

Q. Did you refer it to your lawyer to find out?

A. Yes, we did.

Q. Did he tell you what that was?

[199] A. I remember some discussion about it.

Q. Will you look now at page 22, paragraph 86, and will you read for us the last three sentences of that paragraph where it begins with—will you begin with where Mr. Ferrell had made a statement?

A. Mr. Ferrell had made a statement "We are not here to bargain on the superseniority issue." Mr. Colella asked 'In other words, you won't move, that this is your final position.' Mr. Ferrell then said 'this is our final position. It will have to be—there will have to be a provision for those people who are at work'."

Q. And this occurred at the meeting of May 28, 1959, is that correct?

A. Yes.

Q. Is that a correct quotation of what Mr. Ferrell said to the best of your recollection?

A. I believe so, yes.

Q. Coming down to paragraph 87 on that same page, will you read us the third sentence of that paragraph beginning with "Mr. Ferrell made the following statement"?

A. "Mr. Ferrell made the following statement 'our motive is to keep our business in operation the best way we can. We have assured people that they will not be laid off in the movement of settlement—they wouldn't be laid off as a result of the settlement of the strike, that the company [200] would provide them with some sort of provisional consideration which would assure them that they would continue to work. We told them this when they reported to work'."

Q. Is that a correct quotation of what Mr. Ferrell said at this meeting of the 28th?

A. To the best of my recollection, yes, sir.

* * * * * * *

[201] RE-DIRECT EXAMINATION

Q. (*By Mr. Davidson*) Mr. Colella, do you recall meeting with the company on June 26th, after the pickets had been removed?

A. Yes, I do.

Q. Can you tell us when and where the meeting took place, and who was present?

A. Yes, the meeting took place on the 27th, in the morning, and Mr. Bordonaro and Mr. Karpinski, along with myself, met with Mr. Ferrell and Ray Bertone at the personnel office of the plant. It was understood this meeting was not—as a matter of fact, the company told us this meeting was not for the purpose of negotiating but rather they would give us

some information at this time concerning replaced employees.

Q. Was this the morning after the exchange of the telegrams between the union and the company?

A. That is right, sir.

Q. Was there a discussion at that time as to the number of employees in the bargaining unit that had been permanently replaced?

A. Yes. When we arrived in the morning we talked—well, the company presented us with I believe four forms.

*Mr. Wayman*: Four what?

*The Witness*: Four pieces of paper, some typewritten forms—I guess four pieces of paper and then we asked them [202] about who were the people replaced, and this is what we were going to be there for. They told us both on the 23rd, 24th and on the morning of the 26th that there was approximately ninety people who had been replaced.

Q. (*By Mr. Davidson*) At that meeting you were describing they told you how many had been replaced?

A. Ninety employees had been replaced. This is what they told us on the—well this is what they told us on the morning of the 27th—I am sorry—the 26th.

Q. How about on the afternoon of the 26th, was there a further meeting?

A. Yes, there was. There was a recess at about noon time and we came back about two-thirty. At that time Mr. Ferrell wasn't there but Ray Bertone was, and he then presented us with a list of names of replaced employees. We counted these people and we found a total of one hundred twenty-nine. I

asked Ray Bertone, I said "Where does this one hundred twenty-nine come from? This morning we were talking about ninety. Where did you find these other thirty-nine people in the last couple of hours?" He said "Well, I was told to give you this, and that's it." I said "Who told you that," and he said "Gordon told me to give you this list and that's that." I said "I am going to write this down, Ray," and so I wrote it down and this is Ray Bertone—I said "Ray, is this what you are saying, we come back now two hours later [203] and you have given us a list of one hundred twenty-nine instead of the ninety we were talking about, and your answer to that is 'I was told to give you this list and that's that'." This is what took place in the afternoon.

* * * * * * *

[209] RECROSS EXAMINATION

Q. (*By Mr. Wayman*) I will ask you to look at this letter which is general counsel's exhibit 7 and ask you if that is not a letter dated May 3, 1959, addressed to members of the Erie Resistor Corporation local 613, IUE-CIO?

A. Yes, it is such a letter.

*Mr. Fleischut:* I object to this line of questioning as not having been pursued by this witness on direct examination.

*Trial Examiner*: I don't know. We got very far afield.

*Mr. Wayman:* It was pursued on redirect.

*Trial Examiner*: Actually Mr. Davidson opened up a completely new line of testimony, and you went

into another field and I am going to permit counsel to go into this.

*Mr. Fleischut*: Yes, sir.

Q. (*By Mr. Wayman*) Will you look at the third paragraph of that letter please and read it for us—the fourth paragraph, I am sorry.

Q. "We want to inform you that starting May 7th we are going to obtain replacements. You will have your right to your job only until you are replaced but not after that."

Q. By who is the letter signed?

A. G. Richard Fryling.

Q. Do you know who he is.

A. I met the gentleman yesterday.

Q. What is his position and what was it at that time?

[210] A. President.

Q. Of what? The union?

A. The Erie Resistor Corporation.

*Mr. Fleischut*: Having shown the connection, I withdraw my objection.

* * * * * * *

EDWARD F. BORDONARO, a witness called by and on behalf of the general counsel, being first duly sworn, was examined and testified as follows:

*Trial Examiner:* Now will you state your name for the record?

*The Witness:* Edward F. Bordonaro.

*Trial Examiner:* Where do you live?

*The Witness:* 519 West Sixteenth Street.

*Trial Examiner:* Is that Erie?

*The Witness:* Erie, Pennsylvania.

*Trial Examiner:* Go ahead, Mr. Fleischut.

[211] DIRECT EXAMINATION

Q. (*By Mr. Fleischut*) Were you a member of IUE local 613 during the strike in question in the spring of 1959?

A. Yes, I was.

Q. Did you hold any office in the union at that time?

A. Yes, I did.

Q. What office was that?

A. President of local 613.

Q. How long had you been president before that time?

A. I have been president since August of 1955.

Q. Do you presently hold an office in the union?

A. Yes.

Q. What office is that?

A. Still as president.

Q. Did you have a contract in the spring of 1959?

A. Yes, we did.

Q. When did it expire?

A. March 31, 1959.

Q. Were there any negotiations before that time for a new contract?
A. There was.
Q. Do you recall when they commenced?
A. Negotiations commenced on February 10, 1959.
Q. What, if any correspondence passed between the parties before that time?

[212] *Mr. Wayman:* I would like to object to this because that has already been in by stipulation, and certainly there is no dispute about it.

*Trial Examiner:* Yes, I thought much of that went in, by way of stipulation. You just want to talk about it?

Q. (*By Mr. Fleischut*) Did you make a demand for bargaining in the letter of January 26th?
A. Yes.
Q. Did the company reply and also make a demand on January 30th?
A. Yes, they did.
Q. Do you recall what, if any, agreements were made in the first bargaining session?
A. Yes, sections like union shop, check off, and many other sections.
Q. Do you know the number of those sections?
A. The number of all of the sections?
Q. No, the sections you referred to?
A. Section 2 and section 3 in particular.
Q. What are they?
A. Union shop agreement section 2 and check off agreement section 3.
Q. You may use general counsel's exhibit number 2 to answer the questions. Was there a time when your union struck Erie Resistor?

[213] A. Yes.

Q. When did the strike begin?
A. The strike began on March 31st at midnight.
Q. 1959?
A. 1959.
Q. And were there bargaining sessions between February 10th and March 31, 1959?
A. Yes, there were.
Q. Are those the ones indicated on general counsel exhibit number 2, between those dates?
A. To the best of my knowledge, yes.
Q. Now I want to direct your attention to the final negotiating session before the strike commenced. Do you recall the date of that session?
A. On March 31, 1959.
Q. Do you recall the length of that session?
A. Yes, I do.
Q. How long was it?
A. The negotiating session of March 31st commenced at eight a. m., that morning and ended at ten a. m., April 1st, a total of twenty-six straight hours of negotiations.
Q. What, if any, tentative agreements were reached in an effort to avert the strike in that final session?
A. Are you asking actually what agreements were made prior to the strike?
[214] Q. If you have difficulty in recalling this you might refer to any notes or other statements you have there?
A. I think to be correct I had better.
Q. I am not at this point seeking a list of all agreements agreed upon but any difficult, knotty sections, knotty sections of the contract which were agreed

upon tentatively at the last moment in an effort to avert the strike, if any?

*Mr. Wayman:* I am sorry. I think I am going to have to object to that because I am not sure what the answer would mean if we got it, except the witness—

*Trial Examiner:* I think the question is a little too vague and general, when you start talking about knotty problems, knotty provisions. I will sustain the objection.

Q. (*By Mr. Fleischut*) Did the company offer tentative agreements in the last negotiation session before the strike on what is termed the seniority sections of the contract?

A. Yes, they did.

Q. What sections are those?

A. Sections 11 through 15.

Q. Now are there any other sections of the contract entitled seniority?

A. Yes.

Q. What section is that?

A. Section 8.

Q. Now when was the next following negotiating session?

[215] A. The next negotiating session was held on April 8, 1959.

Q. Was any discussion in the April 8 session directed towards sections 11 through 15 of the contract?

A. Yes, after discussing the five remaining issues that were left unresolved at this twenty-six hour marathon meeting, the company had asked the union if they would consider to reopen some of the sections

of the contract pertaining to seniority. I stated at that point if the company was making its own proposal in reopening these sections of the agreement made prior to the strike. The company at this point had a caucus and came back and Mr. Ferrell stated the company had no intention of reopening sections that had already been agreed to.

Q. Were any specific reference made to sections 11 to 15?

A. Reference, meaning why they needed it or what?

Q. No, the sections to remain as the company offered in the last marathon session before the strike?

A. Yes. They were to remain as they had been agreed to at the marathon session and that was the seniority sections 11 through 15 would remain as they were in the present agreement.

*Mr. Wayman:* I think I have to object to that question and answer as being meaningless. When he says they were to remain, it could be the witness' opinion, or could be something somebody said. It could be his present opinion. I don't know what it means.

[216] *Trial Examiner:* I think from his testimony, the way I understand his testimony, there is no change to be made or contemplated by any of the parties in so far as section 11 through 15 and section 8 in the old agreement pertaining to seniority.

Q. (*By Mr. Fleischut*) Is that correct, all except the last part he put in there as to section 8. I didn't say there were any agreements on section 8.

*Trial Examiner:* I thought you said section 8 also related to seniority.

*Mr. Fleischut:* Yes, but this is not a question at this point.

Q. (*By Mr. Fleischut*) Did the company say there was no position or change in their position on 11 through 15?

A. Yes.

Q. At this session. When was the next negotiating session held?

A. April 14, 1959.

Q. What, if any, changes in position were announced at this meeting?

A. I will try my best to answer this but I would like first to state on the 8th we had five issues and two of the issues were dropped, leaving the remaining to be resolved, 6, 8 and 48.

Q. You are referring to contract sections now?

[217] A. Yes.

Q. What issues were dropped?

A. The insurance section of the contract which was section 61 or 62. I can't recall, and section 48, vacations.

Q. Now on the 14th—

*Trial Examiner:* Wait a minute now. What were the three provisions in issue?

*The Witness:* At this point it was section 6, section 8 and section 48. I am sorry—6, 8 and 48—that's right.

*Trial Examiner:* Just what were those provisions?

*The Witness:* Section 8 dealt with company prerogatives. Section 8—excuse me. Section 6 dealt

with company prerogatives and section 8 seniority and section 48 dealt with insurance.

Q. (*By Mr. Fleischut*) Would you like to refer to a copy of the contract?

A. I think I had better at this point.

Q. The contract is in evidence as exhibit number 8. What information were you referring to, what notes were you referring to, Mr. Bordonaro?

A. I thought in answering the question I could find something in the affidavit here to refresh my memory of that particular date.

Q. Have you found anything?

*Mr. Wayman:* Just a moment please. You say you have your [218] affidavit there you are looking at? You are testifying from your affidavit?

*The Witness:* Not necessarily, no.

*Mr. Wayman:* Is that the affidavit you have on your knee there you are looking at now?

*The Witness:* Yes.

*Trial Examiner:* Suppose you just put that aside? Suppose you put it up here.

*Mr. Wayman:* That's the affidavit you gave the general counsel, is that right?

*The Witness:* That's true.

Q. (*By Mr. Fleischut*) What sections of the contract are you referring to as the remaining issues on the 8th? You may look at the contract and refresh your recollection?

A. There were five unresolved issues on the 8th of April; namely, section 6 which dealt with—

Q. What does it deal with?

A. Company prerogatives, and section 8, seniority, section 48, vacations. Section 62, insurance.

Q. Now you have named four. Was there a fifth issue?

A. Wages.

Q. Now you stated I think that several of these were dropped, is that correct?

A. Yes.

Q. Who dropped them?

[219] A. The union.

*Mr. Wayman:* Again I feel I must object to this. It is so general it can't have a whole lot of meaning. Is this some particular meeting?

*Trial Examiner:* As I understand it, this is the meeting of April 8th.

*Mr Fleischut:* The meeting of April 8th.

Q. (*By Mr. Fleischut*) Which sections remained?

A. Section 6, company prerogative, section 8, seniority, and section 48—that's the one I get in trouble with—

*Trial Examiner:* You said that was vacation?

*The Witness:* Right, this is the one we originally dropped, vacation, and the insurance.

Q. (*By Mr. Fleischut*) Wasn't wages the third remaining issue?

A. Yes.

Q. You have got three issues, is that correct?

A. Yes.

Q. Now when did you next meet?

A. The 14th of April.

Q. Now, if any, proposals were made at the meeting of April 14th to change, alter or amend previously settled contract sections?

A. The company—

*Mr. Wayman:* That is objected to as calling for a conclusion [220] by the witness as to previously settled contract. I think we can have the proposals, if there were any, and the Trial Examiner can draw his own conclusions.

*Trial Examiner:* I think you had better reframe that question.

Q. (*By Mr. Fleischut*) Were any contract sections reopened in the meeting of the 14th?

*Mr. Wayman:* That also calls for a conclusion. Why don't you just ask if there was a proposal made?

*Trial Examiner:* Maybe the witness understands it and it can be developed. All right, go ahead.

*The Witness:* The company submitted a formal proposal dealing with a supplement to the agreement touching on the seniority sections 11 through 15.

Q. (*By Mr. Fleischut*) Now I show you general counsel's exhibit number 22. Do you recognize general counsel's exhibit number 22?

A. Yes, I do.

Q. Now what is that?

A. This is a statement of position of the company, dealing with the workings of the plant and so forth. This was actually a written article on a discussion

that the company had, stating what their intent was.

Q. Is this the document you referred to before I presented it to you?

[221] A. No.

Q. Was it something else?

A. Yes.

Q. Was it in written form?

A. It also was in written form.

Q. To your knowledge, is that document in evidence, that written paper the company presented on the 14th?

A. I don't believe it is.

Q. What did it call for?

A. It called for a freezing of new departments where new products were introduced, and it also designated the existing departments in the plant as being frozen.

Q. What relation did this have to the sections 11 through 15?

A. Only to the extent there were provisions made for frozen departments, and also for designated departments.

Q. Did it have an impact upon 11 through 14, 15?

A. This was aside from sections 11 through 15.

Q. Did it deal in or with a similar or different subject?

A. I would say a similar subject.

Q. Did the company say they were reopening sections 11 through 15 at that time?

*Mr. Wayman:* This is objected to. I think there must be a limit to the amount of leading.

*Trial Examiner:* I will over rule the objection. You may [222] answer.

*The Witness:* Could I have the question restated?

Q. (*By Mr. Fleischut*) Did the company reopen sections 11 through 15 on April 14th?
A. As such? They did not.
Q. Have you exhausted your recollection on this matter, Mr. Bordonaro?
A. Just about.
Q. Would reference to any papers you have refresh your recollection?
A. Very possible.

*Mr. Fleischut:* May the witness examine his statement, sir?

*Mr. Wayman:* I think it improper for the witness to examine an affidavit given to the general counsel. If he has notes he made at the time of the meeting, that might be something else.

*Trial Examiner:* Do you have any notes you made at this meeting?

*The Witness:* This was made from my original notes.

*Trial Examiner:* Do you have your notes made at the meeting?

*The Witness:* I do not.

*Trial Examiner:* It is in the record here there was a joint affidavit submitted to the general counsel by the witness and also signed by Mr. Colella. You did sign such [223] an affidavit, is that correct?

*The Witness:* I did.

*Trial Examiner:* You may point out sections to him. I don't believe you may just hand him the affidavit and let him take over.

*Mr. Fleischut:* May he refer to his statement concerning the meeting of April 14th to refresh his recollection as to what took place at that time?

*Trial Examiner:* All right, go ahead, Mr. Fleischut.

Q. (*By Mr. Fleischut*) Was there any discussion of super-seniority on the 14th?

A. On the 14th of April?

Q. Yes.

A. There was not.

Q. I think the record should indicate the witness now is going to put his affidavit down and testify from his memory.

*Trial Examiner:* You mean you went through all of this and showed him the affidavit and don't even ask him a question about what happened at the meeting?

*Mr. Fleischut:* That's correct, sir.

*Trial Examiner:* Are we playing games here?

*Mr. Fleischut:* No, sir, I made a mistake.

*Trial Examiner:* Oh, oh. All right.

Q. (*By Mr. Fleischut*) I direct your attention to the meeting of May 6th. You may refer to the general counsel's [224] number 2. Do you recall any discussions that took place on May 6th?

A. On May 6th the company withdrew sections 11—seniority sections 11 through 15.

Q. Did they submit anything instead of those sections?
A. Yes, they made a formal proposal in writing at this point.
Q. What did it call for?
A. It called for revisions of different sections of the contract.
Q. I direct your attention now to the meeting of May 14th. Do you recall what took place at that meeting?
A. Yes, I do.
Q. What took place there?
A. The morning session of May 14th the company commenced negotiations with not only withdrawing the seniority sections 11 through 15 but "we also are withdrawing sections 2, 3, 18 and 19." This naturally on the first part, union seniority, was a complete reversal of the company's original position taken on April 8th that they had no intentions of reopening the sections.

*Mr. Wayman:* The editorial comment is objected to.

*Trial Examiner:* I thought it was more of an argument than an editorial comment but whatever we want to call it it certainly is not testimony in response to the question.

Q. (*By Mr. Fleischut*) Were any statements made at that [225] meeting regarding other sections tentatively agreed to?
A. Yes. I wanted to point out that seniority sections 11 through 15 were actually agreed upon—

*Mr. Wayman:* This is objected as not being responsive to the question.

*Trial Examiner:* Yes, give him the question again.

Q. (*By Mr. Fleischut*) Was anything said regarding other sections of the contract previously tentatively agreed to?

A. Yes.

Q. What was said?

A. There was a discussion on the reopening of other sections that were previously agreed to, sections 2, 3, 18 and 19.

Q. Other than those sections, was there any discussion regarding withdrawal of the tentative agreement?

A. There was as to sections on seniority 11 through 15.

Q. Other than those were there any discussions as to withdrawal of tentative agreements on the other previously agreed to section?

A. As far as the company was concerned at this point, they took the position that their withdrawing these sections and all other sections dealing with seniority or anything else are tentative and strictly tentative and they could be withdrawn at any time.

Q. I am referring to May 14th now. Were there any other meetings that day?

[226] A. There was a side-bar conference meeting that afternoon of May 14th.

Q. Was there a discussion of superseniority at that meeting?

A. Yes, there was.

Q. Do you recall when the next meeting took place?

A. The next meeting took place on the 15th of May.

Q. What was discussed at that meeting?

A. There again superseniority came into place and a rather lengthy discussion was had on that. Also on the 5th, the 15th, rather, there—

Q. If you have exhausted your recollection of what took place on the 15th you may say so.

A. I have.

Q. Would reference to any information, notes you have there refresh your recollection?

A. Yes.

*Mr. Fleishut:* I ask the witness be permitted to examine his statement regarding the meeting on the afternoon of the 15th.

*Mr. Wayman:* Which statement are we talking about?

*Mr. Fleishut:* The affidavit.

*Mr. Wayman:* I will object.

*Trial Examiner:* Actually, Mr. Fleischut, you treat this in a very cavalier fashion. You throw a question at him and if the witness hesitates you say well if you can't [227] remember do you want to look at your affidavit. Actually I think you might press a little more because all of this was covered by the preceding witness any how and I can follow it more or less from my notes on the preceding witness' testimony. I think you could press some more on testing the witness' recollection as to what happened, and I realize the witness is really placed in a difficult situation here where you are jumping from meeting to meeting—you are jumping from one meeting to another, and you are only covering selected, we might say, provisions that were discussed, and I think he is in a difficult position because he can follow no chronology.

Well, all right, get your affidavit.

Q. (*By Mr. Fleischut*) Paragraph 7.

*Mr. Wayman:* I have a further objection to this question because it is obviously pure repetition. The previous witness testified specifically on this paragraph of this joint affidavit.

*Trial Examiner:* Yes, on both direct and cross.

*Mr. Wayman:* No question about it.

*Trial Examiner:* I suppose this is corroboration While I am no adherent for corroboration unless it is necessary—certainly two witnesses testifying to the same incident can only be called excessive corroboration.

*Mr. Wayman:* I suggest it is excessive corroboration [228] when a witness has to read from a piece of paper that the other witness has been reading from.

*Mr. Fleischut:* I will withdraw the question.

*Trial Examiner:* Actually Mr. Colella did not read from that affidavit.

*Mr. Wayman:* I think perhaps that's true. I thought I called it to his attention.

*Trial Examiner:* Yes.

*Mr. Fleischut:* I will withdraw the question. You may close your affidavit.

Q. (*By Mr. Fleischut*) Do you recall any discussion concerning discharged employees?

A. Yes.

Q. Did the company make a proposal concerning discharged employees on that day?

A. Yes.

Q. Do you recall what that proposal was?
A. On May 15th?
Q. That's right.
A. Pardon me?
Q. On May 15th.
A. The company stated there probably would not be—there would be no problem with two of the dischargees.
Q. Who were they?
A. Skiba and Buren. The company also stated that on the [229] other two that the charges against them would have to be dropped before considering reinstatement. In other words, at the conclusion of this meeting the company said no problem on Skiba and Buren. If the charges were dropped against the other two, they too would be reinstated.
Q. Do you recall when the next meeting took place? You may refer to general counsel's exhibit number 2.
A. May 18th.
Q. Do you recall any discussions that took place on that date?
A. No.
Q. I direct your attention to the next meeting. When did it occur?
A. May 22nd.
Q. Do you recall what took place at that meeting?
A. Yes.
Q. Can you tell us please?
A. The company again came out with their super-seniority proposals.
Q. Did they indicate flexibility or lack of flexibility on these proposals?
A. Lack of flexibility.

*Mr. Wayman:* I feel it necessary—

*Trial Examiner:* I will sustain it.

*Mr. Wayman:* At least I feel I should put an objection on the record.

[230] Q. (*By Mr. Fleischut*) What did they say about superseniority on that date?

A. On that date they said superseniority was not a bargainable point. They also stated they wanted to give superseniority to those employees that had crossed the picket line equal to the most senior employee in that department. As far as recalling the specific points that were made at that particular meeting, I think I would have to refer to some other document because it is very fuzzy in my mind. I am trying to remember as much as I can.

Q. Was any discussion held at that meeting concerning sections 18 and 19 of the contract? If you don't remember, say so.

A. Sections 18 and 19 I think a parallel was drawn for the superseniority as for officers and stewards at this meeting.

Q. Was anything said concerning sections 2 and 3 of the contract, if you recall?

A. I can't recall.

Q. Do you recall when the next meeting took place?

A. May 23rd.

Q. Do you recall what occurred at that meeting?

A. I recall there again that superseniority was discussed. The company renewed its adamant position on superseniority. I have exhausted any recollection without referring to my affidavit.

Q. Was there any request made for information at this meeting?
A. Yes.
Q. Do you recall what information was requested?
A. At this meeting the names of the employees that were replaced was requested along with the number of people replaced, and also the jobs of the—the numbers of the jobs that were taken by replacements.
Q. Do you recall when the next meeting took place?
A. May 23rd.
Q. Do you recall what was discussed at this meeting?
A. On the 23rd there was a discussion about the number of people who acted as replacements.
Q. Do you recall what was said?
A. The company gave the union a break-down of the number of employees that had been replaced.
Q. Do you recall what that was?
A. The number being eighty-three people had been replaced.
Q. Anything else?
A. The company stated of eighty-three people replaced, replacement of eighty-three people, that thirty-five of these people were never in the bargaining unit.
Q. Did the company make any statement regarding knowing who had been replaced?
A. The company stated that as far as they knew that eighty-three junior employees had been replaced. They didn't know who they [232] were, just that eighty-three junior employees were being replaced.
Q. What date was this conversation on?

*Mr. Wayman:* Pardon me, Mr. Fleischut. I am going to object at this point to the testimony the company said this; the company said that. Could we have the name of the man who did the speaking at this time?

*Trial Examiner:* Yes, it might be well to do that; or at least have it understood the committees were meeting. What was the date of this meeting? That was the last question.

*The Witness:* May the 23rd.

Q. (*By Mr. Fleischut*) When did the next meeting take place?

A. May the 28th.

Q. Do you recall what took place at that meeting?

A. I recall that the company submitted their proposal on superseniority, namely the twenty year plan entitled to recall to work after the strike.

Q. Did they give you that?

A. They did—I can't recall—

Q. I am going to show you general counsel's exhibit number 35 and ask you if you can identify it. I am handing the witness general counsel's exhibit number 35. Do you know what that is?

A. Yes.

Q. What is it?

[233] A. It is the twenty year superseniority plan entitled recall to work after the strike.

Q. Was any request made for information at this meeting on the 28th?

A. Yes.

Q. Please tell us what happened?

A. The union requested the names of those employees who had been replaced. The company at this time

refused to give us the names of these employees replaced based on an NLRB decision of the Oklahoma Rendering case.

Q. When did the next meeting take place?

A. The next meeting took place on May 29th.

Q. Do you recall the discussions on this date?

A. There again in talking about superseniority and the twenty year plan it was asked of the company if they considered this a demand or a proposal and Gordon Ferrell stated he could go further and say this was not a proposal but a program set up, and in effect.

Q. Do you recall the time an agreement—strike that. In meetings after that date do you recall any discussion on superseniority?

A. After the 29th?

Q. Yes.

A. Yes.

Q. How frequently was it discussed at meetings?

[234] A. Very often.

Q. Could you tell us how many of the meetings it was or was not discussed at?

A. I think—not think, but I would say practically every meeting from the 28th on. In fact to the best of my recollection I would say from the 14th on, to the very end.

*Mr. Wayman:* May 13th?

*The Witness:* May 14th.

Q. (*By Mr. Fleischut*) Were there any discussions at later meetings concerning discharged employees?

A. Yes.

Q. Were there proposals made other than you have already described?

A. Yes.

Q. Will you describe what they were?

A. Well the company reversed their position on the reinstatement of dischargees, Buren and Skiba and Grafius.

*Mr. Wayman:* I would like to have an objection to the conclusion the company reversed its position. I think it ought to be an automatic one, as it appears this is going to be said pretty frequently.

*Trial Examiner:* Yes, all right.

Q. (*By Mr. Fleischut*) Could you enumerate for us any other proposals made concerning discharged employees?

A. The company proposed these employees would have to be [235] cleared by the National Labor Relations Board before they would be entitled to reinstatement. This is what I meant by a reversal of their original position on this matter.

Q. Did they take any position on those who did not have formal charges placed against them?

A. Yes.

Q. Will you describe what that was for us?

A. They changed their position at different times. Later on in negotiations it was from no reinstatement or from reinstatement to no reinstatement without being cleared.

Q. Cleared what?

A. On charges.

Q. What charges?

A. Brought about by arrests made of some of the company enployees.

Q. Did the company take a position as to those who the criminal charges had been dropped against?

A. Yes, they said—originally they said these people would be reinstated but then they said these people would not be reinstated.

Q. During the course of negotiations did the company offer different forms of superseniority?

A. Yes, they did.

Q. Will you describe what they were, for us?

A. The company proposed to give seniority equal to the most [236] senior employee in the plant to those who have crossed the picket lines. They changed that to the most senior employee in the company, changed it to the most senior employee in the department, changed to twenty years additional seniority, changed to seniority equal to—the same as officers and stewards, changed to red circle.

Q. What's red circle?

A. The only way I would know how to describe red circle is that there are two categories of people involved; one which is a preferred list and another group which is people with actual seniority to be used in the event of lay offs and recalls.

Q. Did the union ever agree to superseniority?

A. No, they did not.

Q. What did the strike settlement provide concerning superseniority?

*Mr. Wayman:* I have to object to his interpretation of a document that is already in evidence. This is a question that has to be decided by the Trial Examiner and the Board.

*Trial Examiner:* Yes, I will sustain the objection to that.

Q. (*By Mr. Fleischut*) When did the strike end, Mr. Bordonaro?

A. The strike ended on June 24th.

Q. Other than the exchange of telegrams on the 25th did you request on behalf of the employer reinstatement of the strikers?

[237] A. Yes, I did.

Q. When did you do that?

*Mr. Wayman:* Objected to as calling for a conclusion, as something that has to be decided by the Board. I think we have the letters in evidence and telegrams in evidence and some conversation, and if there is another paper I suppose we could have it too.

*Trial Examiner:* Yes, I know there are documents and telegrams that have been received in evidence. You can state what, if anything, the witness did in this respect, or with respect to any application for reinstatement, or whatever you have in mind.

Q. (*By Mr. Fleischut*) Other than the telegrams and letters in evidence did you make any application for the replaced strikers, as a group, for reinstatement?

A. Other than the telegrams and the letters I sent? I would state that personal contact—

Q. Well, tell us what happened and when.

A. The exact date?

Q. No, approximately, if you can't remember the exact date.

A. Soon following the termination of the strike I had asked the company to reinstate the—

*Mr. Wayman:* I am going to object to that.

*Trial Examiner:* You will have to fix a date on that.

*Mr. Wayman:* I think we should have the date and the person [238] to whom he talked.

*Trial Examiner:* Yes, that's right.

*Mr. Wayman:* Otherwise, there is no way at all of my checking this.

*Trial Examiner:* I agree with you. They will have to fix the approximate date and the person.

Q. (*By Mr. Fleischut*) Whom did you speak to concerning reinstatement, Mr. Bordonaro?

A. Mr. Ferrell.

Q. And what did you say?

A. We had asked the company to reinstate the employees.

*Mr. Wayman:* This is objected to. I don't think it is responsive to the question.

*Trial Examiner:* No, it isn't. What did you say to Mr. Ferrell?

*The Witness:* I have a hard time of separating the thing as to the date.

*Trial Examiner:* Actually you haven't even fixed the date yet but I assume we are coming to that later. Can you recall your conversation with Mr. Ferrell?

*The Witness:* Yes. We asked Mr. Ferrell—

Q. (*By Mr. Fleischut*) Who is we?

A. For the union.

Q. Who is speaking?

A. I am speaking. Let me say this, that on June 24th [239] I had asked for reinstatement of the employees. This is pretty tough to answer.

*Trial Examiner*: Well, if you don't know, you will just have to say you don't know, and do the best you can.

Q. (*By Mr. Fleischut*) You don't recall.

A. This is a general question as far as I am concerned because there have been times—

*Trial Examiner:* Now, wait a minute. You are not arguing your case here. You have been asked a question. Did you talk to Mr. Ferrell about reinstatement of these employees? Now just limit your answer to that question.

*The Witness:* I will have to say in answer to the question on June 24th a union proposal was drawn up—rather I would say a paper was drawn up jointly between the company and the union, whereas the union asked that the people which still have status of the company—it was done on the 24th of June; in the same document there existed the last point of the moratorium and this is what I am referring to when I say this is when we asked the company to reinstate the employees.

Q. (*By Mr. Fleischut*) Is that what you are referring to in your letter when you wrote in December?

A. No.

Q. What were you referring to in the letter?

A. I would like to refresh my memory on this by looking at the [240] document itself?

Q. All right, general counsel's exhibit 36.

*Trial Examiner:* All right, I think the witness has refreshed his recollection from reading the letter. Now, let's have some questions.

*The Witness:* I have no recollection of any discussion preceding this letter.

Q. (*By Mr. Fleischut*) Other than those you previously described during the negotiations?

A. Yes.

*Mr. Wayman:* This is objected to. The witness says he has no recollection concerning discussions, and counsel asked him about some discussion referred to before.

*Mr. Fleischut:* Just his previous answers.

*Mr. Wayman:* Well, all right, I suppose the record is clear.

*Trial Examiner:* See if you can straighten it out.

Q. (*By Mr. Fleischut*) Did you ask for reinstatement during negotiations?

A. Yes.

Q. Did the company reinstate the employees?

A. No.

Q. Mr. Bordonaro, were you replaced after the strike—at the plant before the strike ended?

A. On June 26th, yes.

[241] Q. Were you told who your replacement was?

A. On June 26th, yes.

Q. Who was your replacement?

A. Frank Lambrick.

Q. Do you know Frank Lambrick?
A. No.
Q. Would you recognize him if you seen him?
A. Yes.
Q. What department in the plant did you work in?
A. Department 10.
Q. Which building is that in?
A. In the south plant.
Q. During the course of the strike did you see your replacement go into that plant?
A. No.
Q. Do you know if he worked on your job during the strike?
A. No, sir.

*Trial Examiner:* How would the witness know that if he was on strike?

Q. (*By Mr. Fleischut*) Do you know if he worked on any jobs during the strike?
A. Yes.

*Mr. Wayman:* Just a minute, please.

Q. (*By Mr. Fleischut*) How do you know that?

*Mr. Wayman:* There was a question asked if he saw the [242] man go in the plant, which was never answered at all.

*The Witness:* I said no to that. I didn't see him go into the plant. I didn't see him entering the plant. I saw him in the plant.

Q. (*By Mr. Fleischut*) Did you see him in the plant?
A. Yes.
Q. The plant where you had worked previously?
A. Yes.

Q. Did you see him in that plant throughout the strike?
A. I can only recall once seeing him.
Q. Did you ever see him other places during the strike?
A. No.
Q. Do you know if he worked on other jobs during the strike?
A. Yes.

*Mr. Wayman:* Listen—

Q. (*By Mr. Fleischut*) How do you know that?

*Mr. Wayman:* This is objected to because clearly it is going to be hearsay.

*Trial Examiner:* Just where did you get this knowledge of him working in the plant, and working on particular jobs in the plant, when this witness is on the outside?

*The Witness:* You want me to answer?

Q. (*By Mr. Fleischut*) Mr. Bordonaro, could employees other than those replaced during the strike and laid off after the strike have suffered a reduction of wages because of the [243] superseniority policy?

*Mr. Wayman:* I will have to object to that too.

*Trial Examiner:* I suppose anything could happen. I will sustain the objection.

*Mr. Fleischut:* No further questions.

*Trial Examiner:* We will take a ten minute break, and don't talk to any of the people during the recess because you are still on the stand.

(Recess.)

*Trial Examiner:* The hearing will be in order. Mr. Davidson, do you have any questions?

*Mr. Davidson:* Yes.

Q. (*By Mr. Davidson*) Mr. Bordonaro, I show you charging party's exhibits 1 through 3. Have you seen those before?

A. Yes.

Q. Can you tell us under what circumstances?

A. Yes, these are the drop-out cards sent in to the local's office requesting that they be dropped from the rolls of the membership.

Q. Were you present in the local office when these were received?

A. Yes.

Q. Do you recall approximately what date these started to come into the local office?

*Mr. Wayman:* This is objected to.

[244] *Trial Examiner:* Over ruled.

*The Witness:* I would say that commencing on July 1st a great many of these were received by the office.

Q. (*By Mr. Davidson*) Did you on some occasions retain the envelope in which the cards were sent in to the local office?

A. I did.

Q. What did you do with the envelopes that you retained?

A. I attached it to the card, the drop-out card.

Q. With a staple?

A. Yes.

Q. And are those the envelopes attached to the exhibits identified as charging party's 1 and 2 envelopes which you attached?

A. Yes.

Q. And you did this in the case of others as well?

A. Yes.

Q. Did you notice anything particularly about the envelopes which you were attaching?

A. Yes, I did.

Q. What was the feature that you noticed?

A. Some were received at the office, the drop-out cards, in Erie Resistor envelopes marked with Erie Resistor emblem which identified this envelope going through the Erie Resistor stamp machine.

Q. Some of those are the envelopes that you attached?

A. Yes.

Q. Have you received such envelopes before?

A. Yes.

Q. And in what—from whom have those envelopes come in the past?

A. General correspondence with the company, namely, Gordon Ferrell or Mr. Bertone.

Q. Did you collect all of the cards that were submitted in this fashion that came in the mail, withdrawal cards?

A. Yes.

Q. Did you any time look through them to analyze the dates which they bore?

A. Yes.

Q. Can you tell us approximately how many of them were dated and received prior to July 17th?

*Mr. Wayman:* This is objected to. I think the cards themselves would be the best evidence.

*Mr. Davidson:* I will be glad to put them all in.

*Trial Examiner:* I think you might have a period fixed there, and sort of wholesale this: I will give a continuing objection to this line of testimony.

*Mr. Davidson:* I will be happy to try to shorten this. Can I drop putting them all physically in evience but permit the witness to take a look at them and give us an estimate from them?

[246] *Trial Examiner:* You can hand them to him on the stand. You have quite a batch there. Has he counted them before or examined them before?

*Mr. Davidson:* I believe he has.

Q. (*By Mr. Davidson*) Have you examined all of these cards before?
A. I have.
Q. Have you examined them particularly with respect to the dates that they bear?
A. Yes.
Q. Do you recall how many of them are dated prior to July 17th?
A. Yes.
Q. How many?
A. One hundred seventy-three were made out prior to July 17th.
Q. When did you make this analysis or count?
A. Shortly after all of the cards were in.
Q. Approximately how many were dated after July 17th?
A. Approximately seventeen cards.
Q. Of those dated prior to—was that July 17th?
A. Yes.

Q. Can you tell us in what dates the bulk of them fell?

A. The bulk of the cards came in dated July 1st and 2nd.

Q. Did all of the cards which came in Erie Resistor Company envelopes have an Erie Resistor stamp on them?

[247] A. No.

Q. Some of them bore regular postage stamps?

A. Right.

*Mr. Davidson:* I would like to introduce just a few representative cards with attached envelopes.

*Mr. Wayman:* You have had three marked already. I suppose you will introduce those?

*Mr. Davidson:* Yes, and I will mark these four.

(Thereupon, documents were marked charging party's exhibit 4, for identification.)

*Mr. Davidson:* I would like to offer in evidence charging party's exhibits 1 through 4 in evidence.

*Mr. Wayman:* May I take a look at them please?

*Mr. Davidson:* Sure.

*Mr. Wayman:* I would object to the admission of these exhibits as being incompetent, irrelevant and immaterial.

*Trial Examiner:* I will over rule your objection. in view of the testimony that has previously been received concerning these cards, and they may be received in evidence as charging party's exhibits 1, 2, 3 and 4.

(The documents heretofore marked Charging party's exhibits 1, 2, 3 and 4, for identification, were received in evidence.)

*Trial Examiner:* These cards you have identified were withdrawals from individuals who were members of the local?

*The Witness:* Yes.

[248] Q. (*By Mr. Davidson*) Mr. Bordonaro, I know it is difficult to pick out one from a number of these meetings but would you see if you can recall the meeting of May 23rd between the union and the company. You can refer to general counsel's exhibit number 2 if you want to put that meeting in focus. I believe you testified on direct examination there was discussion at this meeting as to the number of people employed as replacements in the plant. Do you recall any remarks made—first, let me ask you who Shioleno is?

A. Who he is?

*Mr. Wayman:* May we have that spelled please?

*Mr. Davidson:* I think probably Mr. Bertone can spell it.

*Trial Examiner:* All right, let's have it spelled.

*Mr. Shioleno:* S-h-i-o-l-e-n-o.

Q. (*By Mr. Davidson*) Will you tell us who Mr. Shioleno is?

A. Plant manager of the electronic division.

Q. Was he present at the meeting of May 23rd?

A. Yes.

Q. Can you recall any remarks he made in discussion of the replacements working in the plant in the course of the May 23rd meeting?

A. Yes, there was a discussion on who the replacements would be. The replacements would be put on lay off in line with their seniority. They in turn would be called back to work [249] in line with their seniority.

Q. Was Mr. Shioleno asked who the replaced employees were?

A. Yes.

Q. Do you remember what his response was?

A. Mr. Shioleno said he didn't know.

Q. Was he asked what jobs they held?

A. Yes.

Q. Do you remember what his response was to that?

A. Could I have that question again please?

Q. Do you remember what his response was to the question what jobs the replaced people held?

A. He said he didn't know, I think.

*Mr. Wayman:* This is objected to.

*Trial Examiner:* I think you have already answered the question unless this is an explanation of it and I don't see how it could be if Shioleno said he didn't know.

Q. (*By Mr. Davidson*) Do you recall further discussion at the May 28th meeting as to the identity of the replaced employees?

A. We had asked first who the replaced employees were. We were refused this information on the 28th. We also discussed the junior employees of the plant—may I strike that. I don't want to state on that.

*Trial Examiner:* Well, it stays there. If you want to withdraw it or change it, you may.

*The Witness:* Okay.

[250] Q. *(By Mr. Davidson)* Do you recall a meeting with Mr. Ferrell's office on the morning of June 26th after pickets had been withdrawn from the plant?

A. Yes.

Q. Do you recall who was there?

A. Yes.

Q. Do you recall what the nature of the discussions at that meeting was? What was the purpose of this meeting?

A. The meeting on June 26th was made clear by the company this was not for purposes of negotiations but rather to submit the names of the ninety people who had been replaced.

Q. Was there any discussion at this meeting as to how the strikers were to be returned to work?

A. Yes.

Q. Can you return what was said in this discussion and by whom?

A. I can't recall exactly but Mr. Ferrell made the statement that morning. He said the people, the striking employees who had status with the company would be called back to their former classification, this in effect meaning a recall out of seniority order.

Q. Did you make any request of Mr. Ferrell at this time?

A. We asked Mr. Ferrell at this time on the 26th reinstate all of the employees that were working on March 31st.

[251] Q. Was this a request that had been made previously, prior to the end of the strike?

A. Yes, we—yes.

*Mr. Davidson:* That's all.

*Trial Examiner:* Go ahead, Mr. Wayman.

*Mr. Wayman:* I have one or two questions of Mr. Bordonaro.

CROSS EXAMINATION

Q. (*By Mr. Wayman*) First of all, I should like to look at general counsel's exhibit 34. Mr. Bordonaro, this is a paper that has already been introduced into evidence and identified by Mr. Ferrell, but it appears to bear your name. Will you look at this document and see if that is your signature. Is that your signature?

A. It is.

Q. And do you recognize this document?

A. I started to read it. May I read it?

Q. Why sure.

A. Yes.

Q. Now this appears to be a letter written on the letter head of International Union Electrical, Radio and Machine Workers, AFL-CIO, and signed by you. Can you tell us to whom this letter was sent? Not that particular paper, but what was your mailing list?

A. Striking employees that crossed the picket line.

Q. Any striking employee that crossed the picket line, is [252] that right?

A. Yes.

Q. Thank you.

*Trial Examiner:* The date of this letter is what, Mr. Bordonaro?

*The Witness:* May 6th, 1959.

Q. (*By Mr. Wayman*) You say it was mailed on or about that date, to any striking employee who crossed the picket line?

A. Yes.

Q. Was it mailed to any employee who said he might cross the picket line?

A. Not to my knowledge.

Q. He or she?

A. Certainly not.

Q. I think when you were testifying about a meeting of June 24th you said a paper was drawn up that contained a proposal or some kind of an arrangement dealing with the termination of the strike. Do you recall that?

A. Yes.

*Mr. Wayman:* I am going to ask that this paper be marked respondent's exhibit 1, I suppose.

(Thereupon, a document was marked Respondent's exhibit 1, for identification.)

Q. (*By Mr. Wayman*) Will you look at this paper that has [253] been marked for identification as respondent's exhibit 1 and tell us what that is, if you recognize it?

A. Yes, I recognize the document.

Q. Can you tell us what it is?

A. It is a union proposal dated June 24, 1959.

Q. Is that the paper to which you had reference in your testimony?

A. Yes.

Q. Now there appears to be inserted in the typed copy some writing in ink in item number one. Will you tell us, if you know, who supplied that writing?

A. I don't know.

*Mr. Wayman:* I am going to offer in evidence respondent's exhibit 1, minus the ink writing which we haven't yet identified.

*Trial Examiner:* That document is not signed, is it?

Q. (*By Mr. Wayman*) The document is not signed, is it, Mr. Bordonaro?

A. No, it is not.

Q. This is a proposal made by the union?

A. Correct.

*Trial Examiner:* A union proposal.

*Mr. Davidson:* You are offering that I assume without the marginal pencil notations?

*Mr. Wayman:* Without the marginal pencil notations, [254] or at least until they are identified by someone.

*Trial Examiner:* Any objections?

*Mr. Fleischut:* No.

Q. (*By Mr. Wayman*) I don't suppose you put those pencil notations on there, did you, Mr. Bordonaro?

A. No, I did not.

*Trial Examiner:* All right, the document may be received in evidence and marked as respondent's exhibit number 1.

(The document heretofore marked respondent's exhibit 1, for identification, was received in evidence.)

*Mr. Wayman:* May I have just a moment please?

*Trial Examiner:* Yes.

Q. (*By Mr. Wayman*) Mr. Bordonaro, referring to general counsel's exhibit number 34, you will remember that was the letter of May 6th that you signed. Approximately how many of those did you send out?

A. I never collected any data on that. I never kept a running account of the number of letters I sent out.

Q. There were several however were there not?

A. Several meaning more than two, I would say yes.

Q. Mr. Bordonaro, do you know where the stamp or mailing machine of Erie Resistor is kept?

A. Today?

Q. Well, today. Can you tell us?

A. Not today.

[255] Q. You don't know where it is kept today?

A. No.

A. Where was it kept back on March 31, 1959, if you know?

A. I know it was kept in the shipping and receiving departments.

Q. By whom was it operated?

A. By a number of people.

Q. Was it operated by bargaining unit employees?
A. Yes.

*Mr. Wayman:* I have no more questions.

*Trial Examiner:* Any redirect?

RE-DIRECT EXAMINATION

Q. (*By Mr. Fleischut*) In respondent's exhibit number 1, I show you that again, and direct your attention to number 2, the union agrees to maintenance of membership proposal.

*Mr. Wayman:* I can't hear what you say.

*Trial Examiner:* Keep your voice up.

Q. (*By Mr. Fleischut*) Union agree to maintenance of membership proposal as agreed to earlier today. Do you recall that?
A. Yes.
Q. When did the union agree for the first time to maintenance of membership instead of union security clause if you recall?
A. I can't recall.
Q. Do you recall if a maintenance of membership agreement in some form was agreed to before that date?
[256] A. Well—
Q. If you don't recall, you may say go?
A. I don't recall.

*Mr. Fleischut:* That's all.

*Trial Examiner:* Do you have anything, Mr. Davidson?

*Mr. Davidson:* I would like to ask a question with reference to the same exhibit.

Q. (*By Mr. Davidson*) Can you recall where this document was typed?

A. Yes.

Q. Can you tell us?

A. The document was typed in the Federal mediator's office, at his typewriter, I think.

Q. Can you recall who composed the document?

A. I think it was—it was a joint effort between the company and the union, namely, Mr. Shioleno and Mr. Colella.

*Mr. Davidson:* That's all.

*Mr. Wayman:* You say this was a joint effort but it is headed union proposal and not signed by anybody, is that right?

*The Witness:* That's right.

*Mr. Wayman:* I have no further questions.

*Trial Examiner:* All right, you may step down.

(Witness excused.)

* * * * * * *

[262] ETHEL GUIANEN a witness called by and on behalf of the General Counsel, being first duly sworn, was examined and testified as follows:

*Trial Examiner:* Will you state your name for the record, please?

*The Witness:* Ethel Guianen.

*Trial Examiner:* Are you Miss or Mrs. Guianen?

*The Witness:* Mrs.

*Trial Examiner:* Where do you live?

*The Witness:* 917 Pennsylvania Avenue, Erie, Pennsylvania.

DIRECT EXAMINATION

Q. (*By Mr. Fleischut*) Directing your attention to the Erie Resistor Strike of January, 1959, were you employed at the Erie Resistor Company, in the bargaining unit, before the strike?

A. Yes.

Q. Were you one of the strikers?

A. Yes, I was.

Q. Now, at that time did you have any capacity in the union?

A. Yes, I was secretary.

Q. As secretary of the union, do you attend union meetings?

A. Yes.

*Trial Examiner:* You mean secretary of 613?

[263] *Mr. Fleischut:* 613 of the IUE.

Q. (*By Mr. Fleischut*) The striking local, is that the union you belong to?

A. Yes.

Q. And is that the union you were secretary of?
A. Yes.
Q. Now, in the course of your duties as secretary of the union do you maintain a book of records of the meetings?
A. Yes, I did.
Q. Is it your duty, as secretary, to make regular entries of the meetings in your minute book?
A. Yes, it is.
Q. Now, I direct your attention to the meeting of May 29, 1959. Would you open your minute book and examine your minutes of that meeting? Have you located that page?
A. Yes.
Q. Do your minutes for that meeting of May 29th indicate any motions made or acted upon regarding the strike?
A. Yes.
Q. Would you please tell us what that was?
A. Motion made and passed unanimously that until Management stops its unfair labor practice by making us agree to giving super-seniority to the scabs that we continue our strike. Do you want the names of the people? Who gave the motion and who seconded it?
[264] Q. Yes.
A. It was made by Seth and seconded by Grafius.
Q. Thank you. You may close your minute book. As secretary of the union, did you attend any of the negotiating sessions of the company during the strike?
A. Yes, I did.

Q. Did you attend the meeting of May 23rd?

A. Yes, sir.

Q. I direct your attention to that meeting. Do you recall any statement made by Mr. Ferrell at that time concerning the company's knowledge of who had been replaced?

A. Well, quite early in the meeting Mr. Ferrell said everything at the shop was in a mess, sales, office work, paper work, everything was all screwed up. They didn't know what their replacement program was because they didn't know the situation of things, themselves. Didn't know what the eventual outcome would be because everything was so mixed up they just didn't know.

Q. Did they say they knew who had been replaced?

A. No. They stated it would be the junior ones who had been working as of March 31st, would be the ones who would be replaced.

Q. And did he make any statement concerning what the disposition of these replaced people would be?

*Mr. Wayman:* I think I'll object to the leading questions [265] because the witness seems to have a pretty good recollection and is able to answer the question without assistance from counsel.

*Trial Examiner:* Yes. I think it's all right to point out the particular subject you want to cover with this witness, but I think the witness can tell, can testify as to what took place at this meeting, insofar as that particular subject is concerned.

Q. (*By Mr. Fleischut*) In narrative form, explain what Mr. Ferrell said to you.

A. Mr. Ferrell said it would be the junior people who were working as of March 31st, that they would be

on lay-off. And he also stated that this replacement had not been done on an individual basis.

Q. Now, I direct your attention to the meeting of June 23rd. Did you attend that meeting?

A. Yes, sir.

Q. Do you recall any remarks of Mr. Shioleno at that time?

A. I believe before Mr. Shioleno spoke Mr. Coyne had asked him if the proposal the company had made as of I believe May 28th, regarding super-seniority—not super-seniority, but giving these people who had crossed the picket line twenty years seniority, and Mr. Shioleno said that it is not a demand of the company; it is the policy of the company. And Mr. Coyne said "Does it mean a settlement of the strike, the [266] demand?" And Mr. Shioleno said "It is not a demand. It is a policy. We are already doing it. We are giving them twenty years."

*Mr. Fleischut:* No further questions.

*Trial Examiner:* Do you have any questions, Mr. Davidson?

*Mr. Davidson:* No, sir.

*Trial Examiner:* Go ahead, Mr. Wayman.